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ENVIRONMENTAL STANDARDS

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Article I.**General Introduction****22E.010.010****General purpose and intent.**

(1) The city of Marysville finds that critical areas perform many important biological and physical functions that benefit the city of Marysville and its residents, with the exception of geologic hazard

areas which may pose a threat to human safety or to public and private property. Specifically, the functions they perform include but are not limited to the following by type:

(a) Wetlands. Helping to maintain water quality; storing and conveying stormwater and floodwater; recharging groundwater; providing important fish and wildlife habitat; and serving as areas for recreation, education and scientific study and aesthetic appreciation; and

(b) Fish and Wildlife Habitat Areas. Maintaining species diversity and genetic diversity; providing opportunities for food, cover, nesting, breeding and movement for fish and wildlife; serving as areas for recreation, education, and scientific study and aesthetic appreciation; helping to maintain air and water quality; controlling erosion; and providing neighborhood separation and visual diversity within urban areas.

In addition, certain portions of the city of Marysville are characterized by geologic hazards that pose a risk to public and private property, to human life and safety and to the natural systems that make up the environment of the city of Marysville. These lands are affected by natural processes that make them susceptible to landslides, seismic activity and severe erosion. Protection of critical areas and regulation of geologic hazards are, therefore, necessary to protect the public health, safety and general welfare.

(2) These regulations of the city of Marysville critical areas ordinance contain standards, guidelines, criteria and requirements intended to identify, analyze and mitigate potential impacts to the city of Marysville's critical areas and to enhance and restore them where possible. The intent of these regulations is to avoid impacts where such avoidance is feasible and reasonable. In appropriate circumstances, impacts to critical areas resulting from regulated activities may be minimized, rectified, reduced or compensated for, consistent with the requirements of these regulations. The city of Marysville's overall goal shall be to protect the functions and values of critical areas and protect the people, public and private property, and natural ecosystems.

(3) It is the further intent of these regulations to:

(a) Implement the goals and policies of the city of Marysville comprehensive plan, including those pertaining to natural features and environmental protection; aesthetics and community character; providing adequate housing and infrastructure; providing opportunities for economic development; creating a balanced transportation system; ensuring adequate public facilities; and achieving a mix of land use types and densities consistent with the city of Marysville's land use plan;

(b) Serve as a basis for exercise of the city of Marysville's substantive authority under the State Environmental Policy Act (SEPA) and the city of Marysville's SEPA rules;

(c) Comply with the requirements of the Growth Management Act ([Chapter 36.70A RCW](#)) and its implementing rules; and through the application of the best available science, in accordance with [WAC 365-195-900 through 365-195-925](#), and in consultation with state and federal agencies and other qualified professionals;

(d) Coordinate environmental review and permitting of proposals to avoid duplication and delay.

(4) The city of Marysville further finds that Snohomish County has identified and mapped some portions of the city of Marysville based on topographic, geologic, hydrologic, and habitat characteristics where the conditions indicate that critical areas are believed to exist. There is, however, a need for additional study and mapping to verify that such conditions do, in fact, prevail and to identify other areas that are potentially geologic hazards. Such mapping will enable the city of Marysville to provide notice to the public of the potential presence of critical areas or the risks associated with developing lands subject to geologic hazards. However, the boundaries of the critical areas and geologic hazard areas displayed on these maps are approximate and are not intended to be used for individual site assessment. Where differences occur between what is illustrated on these maps and site conditions, the actual presence or absence of environmentally critical areas or geologic hazard areas on the site shall control.

22E.010.020

General applicability of these regulations.

(1) The provisions of these regulations shall apply to any activity that potentially affects critical areas or their established buffers unless otherwise exempt. Any action taken pursuant to this title shall result in equivalent or greater functions and values of the critical areas associated with the proposed action, as determined by the best available science and as provided in [Chapter 22E.010 MMC](#). All actions and developments shall be designed and constructed in accordance with the priority sequencing outlined in [MMC 22E.010.120 and 22E.010.230](#) to avoid, minimize, and restore all adverse impacts. Applicants must first demonstrate an inability to avoid or reduce impacts, before restoration and compensation of impacts will be allowed. No activity or use shall be allowed that results in a net

loss of the functions and values of critical areas unless otherwise permitted by a reasonable use determination under [MMC 22E.010.410](#).

(2) To avoid duplication, the following permits and approvals shall be subject to and coordinated with the requirements of these regulations: clearing and grading; subdivision or short subdivision; building permit; planned unit development; shoreline substantial development; variance; conditional use permit; other permits leading to the development or alteration of land; and rezones and other nonproject actions if not combined with another development permit.

22E.010.030 General relationship of regulation of one type of critical area protection to other regulations.

These regulations shall apply as an overlay and in addition to zoning, land use and other regulations, including critical areas regulations, established by the city of Marysville.

(1) Areas characterized as a critical area may also be subject to other regulations established by this chapter due to the overlap or multiple functions of some critical areas. For example, some landslide hazard areas (e.g., steep slopes) adjacent to wetlands may be regulated by buffering requirements according to the wetland management provisions of this chapter. Also, wetlands, for example, may be defined and regulated according to the wetland and habitat management provisions of this chapter. In the event of any conflict between regulations for particular critical areas in this chapter, those regulations which provide greater protection to environmentally critical areas shall apply.

(2) These critical area regulations shall apply as an overlay and in addition to zoning, land use, and other regulations established by the city of Marysville. In the event of any conflict between these regulations and any other regulations of the city of Marysville, the regulations which provide greater protection to environmentally critical areas shall apply.

(3) Compliance with the provisions of this title does not constitute compliance with other federal, state, and local regulations and permit requirements that may be required. The applicant is responsible for complying with these requirements, apart from the process established in this title.

22E.010.040 Best available science.

(1) Criteria for Best Available Science. The best available science is that scientific information applicable to the critical area prepared by local, state or federal natural resource agencies, a qualified scientific professional, or team of qualified scientific professionals, that is consistent with criteria established in [WAC 365-195-900 through 365-195-925](#), as amended.

(2) Protection of Functions and Value and Fish Usage. Critical area studies and decisions to alter critical areas shall rely on the best available science to protect the functions and values of critical areas and must give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fish and their habitat, such as salmon and bull trout.

(3) Lack of Scientific Information. Where there is an absence of valid scientific information or incomplete scientific information relating to a critical area leading to uncertainty about the risk to critical area function or permitting an alteration of or impact to the critical area, the city shall:

(a) Take a "precautionary or no-risk approach" that strictly limits development and land use activities until the uncertainty is sufficiently resolved; and

(b) Require application of an effective adaptive management program that relies on scientific methods to evaluate how well regulatory and nonregulatory actions protect the critical area. An adaptive management program is a formal and deliberative scientific approach to taking action and obtaining information in the face of uncertainty. To effectively implement an adaptive management program, the city hereby commits to:

(i) Address funding for the research component of the adaptive management program;

(ii) Change course based on the results and interpretation of new information that resolves uncertainties; and

(iii) Commit to the appropriate timeframe and scale necessary to reliably evaluate regulatory and nonregulatory actions affecting protection of critical areas and anadromous fisheries.

Article II. Wetlands

22E.010.050 Applicability to wetlands.

(1) See [MMC 22E.010.020](#) for general applicability.

(2) Nonproject actions such as rezones shall be required to perform a wetland determination as defined by these regulations.

22E.010.060 Wetland rating and classification.

(1) Classification. Wetlands shall be classified as Category I, II, III, or IV using the Washington State Department of Ecology's Wetland Rating System for Western Washington, Publication No. 04-06-025, or as amended hereafter. Wetland delineations shall be determined by using the Washington State Wetlands Identification and Delineation Manual, March 1997, or as amended hereafter.

(2) Sources used to identify designated wetlands include, but are not limited to:

(a) United States Department of the Interior, Fish and Wildlife Service, National Wetlands Inventory.

(b) Areas identified as hydric soils, soils with significant soil inclusions and "wet spots" with the United States Department of Agriculture/Soil Conservation Service Soil Survey for Snohomish County.

(c) Washington State Department of Natural Resources, Geographic Information System, Hydrography and Soils Survey Layers.

(d) City of Marysville Critical Areas Inventory Maps.

22E.010.070 Regulated activities in wetlands.

The following activities within a wetland and its associated buffer, or outside a wetland or buffer but potentially affecting the wetland or buffer, shall be regulated pursuant to the standards of this chapter:

(1) Removing, excavating, disturbing or dredging soil, sand, gravel, minerals, organic matter or materials of any kind;

(2) Dumping, discharging or filling with any material;

(3) Draining, flooding or disturbing the water level or water table;

(4) Driving pilings or placing obstructions;

(5) Constructing, reconstructing, demolishing or altering the size of any structure or infrastructure;

(6) Construction of any on-site sewage disposal system, or other underground facilities, except exempted activities;

(7) Destroying or altering vegetation through clearing, harvesting, shading or planting vegetation that would alter the character of a wetland;

(8) Activities that result in significant changes in water temperature, physical or chemical characteristics of wetland water sources, including water quantity and quality, soil flow, or natural contours, and pollutants;

(9) Any other activity potentially affecting a wetland or wetland buffer not otherwise exempt from the provisions of this chapter; and

(10) Work to maintain wetlands intentionally created from nonwetland areas as mitigation for wetland impacts.

22E.010.080 Exemptions to wetland regulations.

(1) See [MMC 22E.010.320](#) for general exemptions to all critical areas.

(2) The following activities shall be exempt from the provisions of this chapter related to wetlands and their buffers, provided they are conducted using best management practices on wetlands:

(a) Activities involving artificially created wetlands intentionally created from nonwetland sites, including but not limited to grass-lined swales, irrigation and drainage ditches, detention facilities, and landscape features, except wetlands created as mitigation.

(b) Work in wetlands created after July 1, 1990, that were unintentionally created as a result of road, street, or highway construction.

(c) In addition, the director may waive compliance with wetland buffer and compensation requirements for the fill of a Class IV wetland no greater than one-tenth of an acre in size if all the following criteria are met:

(i) The wetland is not contiguous with a freshwater or estuarine system and is not considered part of a mosaic wetland complex;

(ii) Standing water is not present in sufficient amounts to support breeding amphibians;

- (iii) Species listed as federal endangered, threatened, and candidate species, or listed by the state as endangered, threatened, and sensitive species, or essential habitat for those species, are not present;
 - (iv) Some form of mitigation is provided for the hydrologic and water quality functions; for example, stormwater treatment or landscaping or other mitigation; and
 - (v) A wetland assessment prepared by a qualified professional, demonstrating the waiver criteria are met.
 - (vi) The determination to waive requirements shall be reviewed through the city's SEPA review process as established in [Chapter 22E.030 MMC](#).
- (3) Notwithstanding the exemption provided by [MMC 22E.010.320](#) and by this chapter, any otherwise exempt activities occurring in or near wetlands shall comply with the intent of these standards and shall consider on-site alternatives that avoid or minimize potential wetland impacts.

22E.010.090 Wetland inventory maps.

The approximate location and extent of wetlands within the city of Marysville's planning area are shown on the critical areas maps adopted as part of this chapter. These maps shall be used as a general guide only for the assistance of property owners and the public; boundaries are generalized. The actual category, extent and boundaries of wetlands shall be determined in the field by a qualified scientific professional according to the procedures, definitions and criteria established by this chapter and [Chapter 22A.020 MMC](#). In the event of any conflict between the wetland location or designation shown on the city of Marysville wetland areas maps and the criteria or standards of this chapter, the criteria and standards resulting from the field investigation shall control.

22E.010.100 Wetland buffer areas.

- (1) The establishment of wetland buffer areas shall be required for all development proposals and activities adjacent to wetlands to protect the integrity, function and value of the wetland. Buffers shall consist of an undisturbed area of native vegetation established to protect the functions and values of the wetland. Buffers shall be determined in conjunction with considerations of wetland category and quality, approved wetland alterations and required mitigation measures. Buffers are not intended to be established or to function independently of the wetland they are established to protect; the establishment of a buffer shall not operate to prevent a use or activity that would otherwise be permitted as set forth in [MMC 22E.010.080](#), subsections (7) and (8) of this section, and [MMC 22E.010.320](#), in the wetland subject to mitigation.
- (2) Buffers shall be measured from the wetland edge as delineated and marked in the field using the wetland delineation methods defined in [Chapter 22A.020 MMC](#). Required buffer widths shall reflect the sensitivity of the wetland and its category and intensity of human activity proposed to be conducted near the wetland.
- (3) Where existing buffer area plantings provide minimal vegetative cover and cannot provide the minimum water quality or habitat functions, buffer enhancement shall be required. Where buffer enhancement is required, a plan shall be prepared that includes plant densities not less than five feet on center for shrubs and 10 feet on center for trees. Monitoring and maintenance of plants shall be required in accordance with [MMC 22E.010.160](#), Wetland monitoring program and contingency plan. Existing buffer vegetation is considered "inadequate" and will require enhancement through additional native plantings and removal of nonnative plants when:
- (a) Nonnative or invasive plant species provide the dominate cover;
 - (b) Vegetation is lacking due to disturbance, and wetland resources could be adversely affected; or
 - (c) Enhancement plantings in the buffer could significantly improve buffer functions.
- (4) The following buffer widths are established as minimum targets. All buffer widths shall be measured from the wetland boundary as surveyed in the field. If according to the buffer mitigation plan, the buffer is not sufficient to protect the wetland, the city shall require larger buffers where it is necessary to protect wetlands functions based on site-specific characteristics. As an alternative to the buffer width being based on wetland category, the buffer width for Category I wetlands may be established according to the "Buffer Alternative 3" methodology contained in the Department of Ecology's document titled "Freshwater Wetlands in Washington State, Volume 2: Managing and Protecting Wetlands, Appendix 8 C." Buffer Alternative 3 establishes buffer widths based on wetland category, intensity of impacts, and wetland functions or special characteristics.

Wetland Buffer Widths

| Wetland Category | Buffer Width |
|---|---------------------------------|
| Category I Ebey Slough except in the following location: north and south shore of Ebey Slough between the western city limits, at approximately I-5, and 47th Ave. NE | 125 feet 100 feet 25 feet |
| Category II | 100 feet |
| Category III | 75 feet |
| Category IV | 35 feet |

(5) Buffer widths may be modified by averaging buffer widths as set forth herein:

(a) Buffer width averaging shall be allowed only where the applicant demonstrates to the community development department that the averaging will not impair or reduce the habitat, water quality purification and enhancement, stormwater detention, ground water recharge, shoreline protection and erosion protection and other functions of the wetland and buffer, that lower-intensity land uses would be located adjacent to areas where buffer width is reduced, and that the total area contained within the buffer after averaging is no less than that contained within the standard buffer prior to averaging;

(b) Buffer reductions may be allowed for Category III and IV wetlands; provided, that the applicant demonstrates the proposal meets criteria in [subsections \(5\)\(b\)\(i\) through \(iii\) and either \(iv\) or \(v\) of this section](#). Buffer width reduction proposals that meet the criteria as determined by the director shall be reduced by no more than 25 percent of the required buffer and shall not be less than 25 feet in width.

(i) The buffer area meets buffer area planting requirements in [subsection \(3\) of this section and MMC 22E.010.150](#) and has less than 15 percent slopes; and

(ii) A site-specific evaluation and documentation of buffer adequacy is based on consideration of the best available science as described in [MMC 22E.010.040](#); and

(iii) Buffer width averaging as outlined in [subsection \(5\)\(a\) of this section](#) is not being utilized; and either

(iv) The subject property is separated from the wetland by pre-existing, intervening, and lawfully created structures, public roads, or other substantial pre-existing intervening improvements; and the intervening structures, public roads, or other substantial improvements are found to separate the subject upland property from the wetland due to their height or width, preventing or impairing the delivery of buffer functions to the wetland, in which cases the reduced buffer width shall reflect the buffer functions that can be delivered to the wetland; or

(v) The wetland scores 19 points or less for wildlife habitat in accordance with the rating system applied in [MMC 22E.010.060](#), and mitigation is provided based on [MMC 22E.010.150, 22E.010.370, and Table 2 below](#), when determined appropriate based on the evaluation criteria in [subsection \(5\)\(b\)\(ii\) of this section](#).

Table 2. Mitigation Measures

| Disturbance | Activities that may cause disturbance | Measures to minimize impacts |
|--------------------|---|---|
| Lights | Parking lots, warehouses, manufacturing, high density residential | Direct lights away from wetland |
| Noise | Manufacturing, high density residential | Place activity away from wetland |
| Pets and Humans | Residential areas | Landscaping to delineate buffer edge and to |

| | | |
|------|---------------|---|
| | | discourage disturbance of wildlife by humans and pets |
| Dust | Tilled fields | Best management practices for dust control |

(c) Notwithstanding the reductions permitted in [subsections \(5\)\(a\) and \(b\) of this section](#), buffer widths shall not be reduced by more than 25 percent of the required buffer.

(6) The buffer width stated in [subsection \(4\) of this section](#) shall be increased by 25 percent:

(a) When the qualified scientific professional determines, based upon a site-specific wetland analysis, that for Category III and IV wetlands the habitat value equals or exceeds 20 points, and for Category II wetlands the habitat value equals or exceeds 29 points; or

(b) When the adjacent land is susceptible to severe erosion and erosion control measures will not effectively prevent adverse wetland impacts; or

(c) When the standard buffer has minimal or degraded vegetative cover that cannot be improved through enhancement; or

(d) When the minimum buffer for a wetland exceeds into an area with a slope of greater than 25 percent, the buffer shall be the greater of:

(i) The minimum buffer for that particular wetland; or

(ii) Twenty-five feet beyond the point where the slope becomes 25 percent or less.

(7) The community development director may authorize the following low impact uses and activities provided they are consistent with the purpose and function of the wetland buffer and do not detract from its integrity: viewing platforms and interpretive signage, uses permitted within the buffer shall be located in the outer 25 percent of the buffer.

(8) Trails and Open Space. For walkways and trails, and associated open space in critical buffers located on public property, or on private property where easements or agreements have been granted for such purposes, all of the following criteria shall be met:

(a) The trail, walkway, and associated open space shall be consistent with the comprehensive parks, recreation, and open space master plan. The city may allow private trails as part of the approval of a site plan, subdivision or other land use permit approvals.

(b) Trails and walkways shall be located in the outer 25 percent of the buffer, i.e., the portion of the buffer that is farther away from the critical area. Exceptions to this requirement may be made for:

(i) Trail segments connecting to existing trails where an alternate alignment is not practical and where public access points to water bodies are spaced periodically along the trail.

(c) Enhancement of the buffer area is required where trails are located in the buffer. Where enhancement of the buffer area adjacent to a trail is not feasible due to existing high quality vegetation, additional buffer area or other mitigation may be required.

(d) Trail widths shall be a maximum width of 10 feet. Trails shall be constructed of permeable materials; provided, that impervious materials may be allowed if pavement is required for handicapped or emergency access, or safety, or is a designated nonmotorized transportation route or makes a connection to an already dedicated trail, or reduces potential for other environmental impacts.

(9) Utilities may be allowed in wetlands or wetland buffers if limited to the pipelines, cables, wires and support structures of utility facilities within utility corridors when the following standards are met:

(a) There is no alternative location with less adverse impact on the critical area and critical area buffer;

(b) New utility corridors are not located over habitat used for salmonid rearing or spawning or by a species listed in [MMC 22E.010.170\(1\)\(a\)](#) unless the department determines that there is no other feasible crossing site;

(c) To the maximum extent practical utility corridors are located so that:

(i) The width is minimized;

(ii) The removal of trees is minimized;

(iii) An additional, contiguous and undisturbed wetland buffer, equal in area to the disturbed critical area buffer area including any allowed maintenance roads, is provided to protect the wetland;

(d) To the maximum extent practical, access for maintenance is at limited access points into the critical area buffer rather than by a parallel maintenance road. If a parallel maintenance road is necessary, the following standards are met:

(i) To the maximum extent practical the width of the maintenance road is minimized and in no event greater than 15 feet; and

(ii) The location of the maintenance road is contiguous to the utility corridor on the side of the utility corridor farthest from the critical area;

(e) The utility corridor or facility will not adversely impact the overall wetland hydrology;

(f) The utility corridor serves multiple purposes and properties to the maximum extent practical;

(g) Bridges or other construction techniques that do not disturb the wetlands are used to the maximum extent practical;

(h) Bored, drilled or other trenchless crossing is laterally constructed under a wetland; provided, that the activity does not interrupt the ground water connection to the wetland or percolation of surface water down through the soil column. Specific studies by a hydrologist shall be conducted to determine whether the ground water connection to the wetland or percolation of surface water down through the soil column could be disturbed.

(10) Storm water management facilities, such as biofiltration swales and dispersion facilities, may be located within the outer 25 percent of wetland buffers only if they will have no negative effect on the functions and purpose the buffers serve for the wetland or on the hydrologic conditions, hydrophytic vegetation, and substrate characteristics necessary to support existing and designated beneficial uses.

(11) For subdivisions and short subdivisions, the applicable wetland and associated buffer requirements for any development or redevelopment of uses specifically identified in, and approved as part of, the original subdivision or short subdivision application shall be those requirements in effect at the time that the complete subdivision or short subdivision application was filed; provided, that for subdivisions this provision shall be limited to final plats reviewed and approved under Ordinance 1928, "Sensitive Areas," adopted December 14, 1992, or as amended at the time of final plat approval. However, at the discretion of the community development director a buffer enhancement plan may be required in accordance with subsection (3) of this section if the wetland or buffer has become degraded or is currently not functioning or if the wetland and/or buffer maybe negatively affected by the proposed new development.

(12) Minor additions or alterations, such as decks and minor additions less than 120 square feet, interior remodels, or tenant improvements which have no impact on the wetland or wetland buffer, are exempt from the buffer enhancement requirements.

(13) Required buffers shall not deny all reasonable use of property. A variance from buffer width requirements may be granted by the hearing examiner for the city of Marysville upon showing by the applicant that:

(a) There are special circumstances applicable to the subject property or to the intended use such as shape, topography, location or surroundings that do not apply generally to other properties and which support the granting of a variance from buffer width requirements; and

(b) Such buffer width variance is necessary for the preservation and enjoyment of a substantial property right or use possessed by other similarly situated property but which because of special circumstances is denied to the property in question; and

(c) The granting of such buffer width variance will not be materially detrimental to the public welfare or injurious to the property or improvement; and

(d) The granting of the buffer width variance will not materially affect the subject wetland;

(e) Best available science, as set forth in [MMC 22E.010.040](#), shall be taken into consideration in the granting of a buffer width variance.

22E.010.110

Wetland alteration and mitigation.

(1) All adverse impacts to wetland functions and values shall be mitigated. Mitigation actions by an applicant or property owner shall occur in the following priority sequence:

(a) Avoiding the impact altogether by not taking a certain action or parts of actions;

(b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts;

(c) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;

- (d) Reducing or eliminating the impact over time by preservation and maintenance operations;
- (e) Compensating for the impact by replacing or providing substitute resources or environments;
- (f) Monitoring the impact and taking appropriate corrective measures.
- (2) Where impacts cannot be avoided, the applicant or property owner shall seek to implement other appropriate mitigation actions in compliance with the intent, standards and criteria of this section. These shall include consideration of alternative site plans and building layouts or reductions in the density or scope of the proposal.
- (3) Alteration of wetlands or their buffers may be permitted by the community development department subject to the following criteria:
 - (a) Category I Wetlands. Alterations of Category I wetlands shall be avoided, subject to the reasonable use provisions of these regulations.
 - (b) Category II Wetlands.
 - (i) Any proposed alteration and mitigation shall comply with requirements of this section, [MMC 22E.010.120](#), and [22E.010.140 through 22E.010.160](#); and
 - (ii) No net loss of wetland function and value will occur due to the alteration.
 - (c) Category III and IV Wetlands.
 - (i) The proposed mitigation complies with the requirements of this section and [MMC 22E.010.140 through 22E.010.160](#); and
 - (ii) Where enhancement is proposed, replacement ratios comply with the requirements of [MMC 22E.010.120\(3\)](#).

22E.010.120 Wetland mitigation standards and criteria.

- (1) Location and Timing of Mitigation.
 - (a) Restoration, creation, or enhancement actions should be undertaken on or adjacent to the site, or where restoration or enhancement of a former wetland is proposed, within the same watershed. Replacement in-kind of the impacted wetland is preferred for creation, restoration, or enhancement actions. The city may accept or recommend restoration, creation, or enhancement which is off-site and/or out-of-kind, if the applicant can demonstrate that on-site or in-kind restoration, creation, or enhancement is infeasible due to constraints such as parcel size or wetland type or that a wetland of a different type or location is justified based on regional needs or functions;
 - (b) Whether occurring on-site or off-site, the mitigation project shall occur near an adequate water supply with a hydrologic connection to the wetland to ensure a successful wetlands development or restoration;
 - (c) Any agreed-upon proposal shall be completed before initiation of other permitted activities, unless a phased or concurrent schedule has been approved by the community development department;
 - (d) Wetland acreage replacement ratios shall be as specified in subsection (3) of this section.
- (2) Mitigation Performance Standards.
 - (a) Adverse impacts to wetland functions and values shall be mitigated. Mitigation actions shall be implemented in the preferred sequence identified in [MMC 22E.010.110\(1\)](#). Proposals which include less preferred or compensatory mitigation shall demonstrate that:
 - (i) All feasible and reasonable measures will be taken to reduce impacts and losses to the original wetland;
 - (ii) No overall net loss will occur in wetland functions, values and acreage; and
 - (iii) The restored, created or enhanced wetland will be as persistent and sustainable as the wetland it replaces.
- (3) Wetland Replacement Ratios.
 - (a) Where wetland alterations are permitted by this chapter, the applicant shall restore or create equivalent areas of wetlands in order to compensate for wetland losses. Equivalent areas shall be determined according to acreage, function, category, location, timing factors, and projected success of restoration or creation;
 - (b) Where wetland creation is proposed, all required buffers for the creation site shall be located on the proposed creation site. Properties adjacent to or abutting wetland creation projects shall not be responsible for providing any additional buffer requirements.
 - (c) The following acreage replacement ratios shall be used as targets. The community development department may vary these standards if the applicant can demonstrate and the

community development department agrees that the variation will provide adequate compensation for lost wetland area, functions and values, or if other circumstances as determined by the community development department justify the variation:

Wetland Mitigation Ratios

| Category and Type of Wetland | Re-Establishment or Creation | Rehabilitation | Re-Establishment or Creation (R/C) and Enhancement (E) | Enhancement Only |
|------------------------------|------------------------------------|--|--|------------------|
| Category I | | | | |
| Forested | 6:1 | 12:1 | 1:1 R/C and 10:1 E | 24:1 |
| Based on Score for Functions | 4:1 | 8:1 | 1:1 R/C and 6:1 E | 16:1 |
| Estuarine | Case by Case | 6:1 Rehabilitation of an Estuarine Wetland | Case by Case | Case by Case |
| Bog | Irreplaceable – Avoidance Required | 6:1 Rehabilitation of a Bog | Case by Case | Case by Case |
| Natural Heritage | Irreplaceable – Avoidance Required | 6:1 Rehabilitation of a Natural Heritage Site | Case by Case | Case by Case |
| Category II | | | | |
| Estuarine | Case by Case | 4:1 | Case by Case | Case by Case |
| All Other | 3:1 | 8:1 | 1:1 R/C and 4:1 E | 12:1 |
| Category III | 2:1 | 4:1 | 1:1 R/C and 2:1 E | 8:1 |
| Category IV | 1.5:1 | 3:1 | 1:1 R/C and 2:1 E | 6:1 |

Creation = The manipulation of the physical, chemical, or biological characteristics present to develop a wetland on an upland or deepwater site, where a wetland did not previously exist. Activities typically involve excavation of upland soils to elevation that will produce a wetland hydroperiod, create hydric soils, and support the growth of hydrophytic plant species. Establishment result in a gain in wetland acres.

Re-Establishment = The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural or historic functions to a former wetland. Activities could include removing fill material, plugging ditches, or breaking drain tiles. Re-establishment results in a gain in wetland acres.

Rehabilitation = The manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural or historic function of a degraded wetland. Activities could involve breaching a dike or reconnecting wetland to a floodplain or returning tidal influence to a wetland. Rehabilitation results in a gain in wetland function but does not result in a gain in wetland acres.

Enhancement = The manipulation of the physical, chemical or biological characteristics of a wetland site to heighten, intensify or improve functions or to change the growth stage or composition of the vegetation present. Enhancement is undertaken for specified purposes such as water quality improvement, flood water retention or habitat. Activities typically consist of planting vegetation, controlling nonnative or invasive species, modifying the site elevation or the proportion of open water to influence hydroperiods, or some combination of these. Enhancement results in a change in some wetland functions and can lead to a decline in other wetland function, but does not result in a gain in wetland acres.

(d) The qualified scientific professional in the wetlands report may, where feasible, recommend that restored or created wetlands shall be a higher wetland category than the altered wetland.

(4) The community development director may increase the ratios under the following circumstances:

- (a) Uncertainty exists as to the probable success of the proposed restoration or creation;
- (b) A significant period of time will elapse between impact and replication of wetland functions;
- (c) Proposed mitigation will result in a lower category of wetland or reduced functions relative to the wetland being impacted; or
- (d) The impact was an unauthorized impact.

22E.010.130 Wetland mitigation banks.

Wetland mitigation banks are a site where wetlands are restored, created, enhanced, or in exceptional circumstances, preserved expressly for the purpose of providing compensatory mitigation in advance of authorized impacts to similar resources.

(1) Credits from a wetland bank may be approved for use as compensation for unavoidable impacts to wetlands when:

- (a) The bank is certified under [Chapter 173-700 WAC](#);
- (b) The community development director determines that the wetland mitigation bank provides appropriate compensation for the authorized impacts; and
- (c) The proposed use of credits is consistent with the terms and conditions of the bank's certification.

(2) Replacement ratios for projects using bank credits shall be consistent with the terms and conditions of the bank's certification.

(3) Credits from a certified wetland mitigation bank may be used to compensate for impacts located within the service area specified in the bank's certification. In some cases, bank service areas may include portions of more than one adjacent drainage basin for specific wetland functions.

22E.010.140 Wetland mitigation plan requirements.

Where it is determined by the city that compensatory wetland mitigation is required or appropriate, a mitigation plan shall be prepared. The purpose of the plan is to prescribe mitigation to compensate for impacts to the wetland functions, values and acreage as a result of the proposed action. This plan shall consider the chemical, physical, and biological impacts on the wetland system using a recognized wetlands assessment methodology and best professional judgment. The mitigation plan shall be prepared in two phases, a preliminary phase and a detailed phase.

(1) Preliminary Plan – Standards and Criteria. The applicant shall prepare a preliminary mitigation plan for submission to the community development department at the time of application filing. The preliminary mitigation plan shall include the following components and shall be consistent with the standards in [MMC 22E.010.120](#):

(a) A clear statement of the objectives of the mitigation. The goals of the mitigation plan should be stated in terms of the new wetland functions and values compared to the functions and values of the original wetland. Objectives should include qualitative and quantitative standards for success of the project, including:

- (i) Hydrologic characteristics (water depths, water quality, hydroperiod/hydrocycle characteristics, flood storage capacity);
- (ii) Vegetative characteristics (community types, species composition, density, and spacing);
- (iii) Faunal characteristics; and
- (iv) Final topographic elevations;

(b) An ecological assessment of the wetlands values and wetland buffers that will be lost as a result of the activities, and of the replacement wetlands and buffers, including but not limited to the following:

- (i) Acreage of project;
- (ii) Existing functions and values;
- (iii) Sizes of wetlands, wetland buffers, and areas to be altered;
- (iv) Vegetative characteristics, including community type, area coverage, species composition and density;
- (v) Habitat type(s) to be enhanced, restored, or created;

(c) A statement of the location, elevation, and hydrology of the new site, including the following:

- (i) Relationship of the project to the watershed and existing water bodies;
- (ii) Topography of site using one-foot contour intervals;
- (iii) Water level data, including depth and duration of seasonally high water table;
- (iv) Water flow patterns;
- (v) Estimated amounts of grading, filling and excavation, including a description of imparted soils;
- (vi) Water pollution mitigation measures during construction;
- (vii) Aerial coverage of planted areas to open water areas (if any open water is to be present); and
- (viii) Appropriate buffers;

- (d) A conceptual planting plan.
- (2) Prior to final development approval, a final plan consistent with the standards in [MMC 22E.010.160](#) shall be submitted. In addition to information contained within the preliminary plan, the detailed plan will contain:
 - (a) A detailed planting plan, describing what will be planted, and where and when the planting will occur as follows:
 - (i) Soils and substrate characteristics;
 - (ii) Specify substrate stockpiling techniques;
 - (iii) Planting instructions, including species, stock type and size, density or spacing of plants, and water and nutrient requirements; and
 - (iv) Dates for beginning and completion of mitigation project, and sequence of construction activities;
 - (b) A monitoring and maintenance plan, consistent with [MMC 22E.010.160](#):
 - (i) Specify procedures for monitoring and site maintenance; and
 - (ii) Submit monitoring reports to the community development department as outlined in [MMC 22E.010.160\(2\)\(d\)\(i\) through \(vi\)](#);
 - (c) A contingency plan, consistent with these regulations;
 - (d) A detailed budget for implementation of the mitigation plan, including monitoring, maintenance and contingency phases;
 - (e) A guarantee, in the form of a bond or other security device in a form acceptable to the city attorney, assuring that the work will be performed as planned and approved, consistent with [MMC 22E.010.160\(2\)](#).

22E.010.150 Performance standards for wetland mitigation planning.

- (1) The following performance standards shall be incorporated into mitigation plans submitted to the city of Marysville:
 - (a) Use native plants (not introduced or foreign species);
 - (b) Use plants adaptable to a broad range of water depths;
 - (c) Plants should be commercially available or available from local sources;
 - (d) Plant species high in food and cover value for fish and wildlife;
 - (e) Plant mostly perennial species;
 - (f) Avoid committing significant areas of site to species that have questionable potential for successful establishment;
 - (g) Plant selection must be approved by a qualified scientific professional;
 - (h) Planting densities and placement of plants should be determined by the qualified scientific professional and shown on the design plans;
 - (i) The wetland (excluding the buffer area) should not contain more than 60 percent open water as measured at the seasonal high water mark;
 - (j) Minimum buffer widths as outlined in [MMC 22E.010.100](#);
 - (k) The planting plan must be approved by the city's community development director or consultant;
 - (l) Stockpiling should be confined to upland areas and contract specifications should limit stockpile durations to less than four weeks;
 - (m) Planting instructions which describe proper placement, diversity, and spacing of seeds, tubers, bulbs, rhizomes, sprigs, plugs, and transplanted stock;
 - (n) Apply controlled-release fertilizer at the time of planting and afterward only as plant conditions warrant (determined during the monitoring process) and with consideration of run-off and a type that will minimize impacts beyond the area intended;
 - (o) Install an irrigation system, if necessary, for initial establishment period as determined by the planning director or their designated official;
 - (p) Buffers shall be surveyed, staked, and fenced prior to any construction work, including grading and clearing, may take place on the site. Permanent fencing is required pursuant to [MMC 22E.010.370](#);
 - (q) Temporary erosion and sedimentation controls, pursuant to an approved plan, shall be implemented during construction; and
 - (r) Construction specifications and methods must be approved by a qualified scientific professional and the community development department.
- (2) The following additional standards shall apply to wetland creation sites:
 - (a) Water depth is not to exceed 6.5 feet (two meters);

- (b) The grade or slope that water flows through the wetland is not to exceed six percent;
- (c) Slopes within the wetland basin and the buffer zone should not be steeper than three to one ratio (horizontal to vertical);
- (3) On completion of construction, the wetland mitigation project must be signed off to indicate that the construction has been completed as planned, by the applicant's qualified scientific professional and the community development department.

22E.010.160 Wetland monitoring program and contingency plan.

- (1) A monitoring program shall be implemented to determine the success of the mitigation project and any necessary corrective actions. This program shall determine if the original goals and objectives are being met.
- (2) A contingency plan shall be established for compensation in the event that the mitigation project is inadequate or fails. Security for performance in accordance with [Chapter 22G.040 MMC](#) is required for performance, monitoring and maintenance in accordance with the terms of the mitigation agreement. The security for performance shall be for a period of five years, but the community development department may agree to reduce the security in phases in proportion to work successfully completed over the duration of the security.
 - (a) During monitoring, use scientific procedures for establishing the success or failure of the project;
 - (b) For vegetation determinations, permanent sampling points shall be established;
 - (c) Vegetative success equals 80 percent survival of planted trees and shrubs and 80 percent cover of desirable understory or emergent species;
 - (d) Submit monitoring reports on the current status of the mitigation project to the community development department. The reports are to be prepared by a qualified scientific professional and reviewed by the community development department and should include monitoring information on wildlife, vegetation, water quality, water flow, storm water storage and conveyance, and existing or potential degradation, and shall be produced on the following schedule:
 - (i) At time of construction;
 - (ii) Thirty days after planting;
 - (iii) Early in the growing season of the first year;
 - (iv) End of the growing season of first year;
 - (v) Twice the second year; and
 - (vi) Annually thereafter;
 - (e) Monitor between three and five growing seasons, depending on the complexity of the wetland system. The time period will be determined and specified in writing prior to the implementation of the site plan;
 - (f) If necessary, correct for failures in the mitigation project;
 - (g) Replace dead or undesirable vegetation with appropriate plantings, based on the approved planting plan or [MMC 22E.010.150](#);
 - (h) Repair damages caused by erosion, settling or other geomorphological processes;
 - (i) Redesign mitigation project (if necessary) and implement the new design; and
 - (j) Correction procedures shall be approved by a qualified scientific professional and the community development department.

Article III. Fish and Wildlife Habitat Areas

22E.010.170 Fish and wildlife habitat conservation areas designated.

While not all of the below listed critical habitat areas exist in the city of Marysville, these regulations provide for the protection of the following fish and wildlife habitat conservation areas:

- (1) Primary fish and wildlife habitat conservation areas shall include the following:
 - (a) Habitats with federally designated endangered, threatened, and candidate species and state designated endangered, threatened, and sensitive species which have a primary association as defined in [Chapter 22A.020 MMC](#). Federally designated endangered, threatened and candidate species are those fish and wildlife species identified by the U.S. Fish and Wildlife Service and the National Marine Fisheries Service that are in danger of extinction or threatened to become endangered. The U.S. Fish and Wildlife Service and the National Marine Fisheries Service should be consulted for current listing status. State designated endangered, threatened, and sensitive species are those fish and wildlife species native to the state of Washington identified by the Washington Department of Fish and Wildlife, that are in danger of extinction, threatened to become endangered, vulnerable, or

declining and are likely to become endangered or threatened in a significant portion of their range within the state without cooperative management or removal of threats. State designated endangered, threatened, and sensitive species are periodically recorded in [WAC 232-12-014](#) (State Endangered Species) and [WAC 232-12-011](#) (State Threatened and Sensitive Species). The State Department of Fish and Wildlife maintains the most current listing and should be consulted for current listing status.

(b) State designated priority habitats and areas that are associated with state designated endangered, threatened, and sensitive species in [subsection \(1\)\(a\)](#) of this section. Priority habitats and species are considered to be priorities for conservation and management. Priority species require protective measures for their perpetuation due to their population status, sensitivity to habitat alteration, and or recreational, commercial, or tribal importance. Priority habitats are those habitat types or elements with unique or significant value to a diverse assemblage of species. A priority habitat may consist of a unique vegetation type or dominant plant species, a described successional state, or a specific structural element. Priority habitats and species are identified by the Department of Fish and Wildlife.

(c) Naturally occurring ponds under 20 acres or not less than 0.50 acres (lakes greater than 20 acres are covered under shoreline regulations).

(d) Lakes, ponds, streams and rivers planted with game fish by a governmental or tribal entity.

(e) State natural area preserves and natural resource conservation areas.

(f) Areas of rare plant species and high quality ecosystems as documented by the State Department of Natural Resources Heritage Program.

(g) Land that provides essential connections between habitat blocks and open space and that is designated by the State Department of Fish and Wildlife as a priority habitat in association with state endangered, threatened, or sensitive species in [subsection \(1\)\(a\) of this section](#).

(h) Streams as defined and classified in [Chapter 22A.020 MMC](#).

(2) Habitats and species of local importance are those identified by the city, including but not limited to those habitats and species that, due to their population status or sensitivity to habitat manipulation, warrant protection. Habitats may include a seasonal range or habitat element with which a species has a primary association, and which, if altered, may reduce the likelihood that the species will maintain and reproduce over the long term.

(a) Designation Process. The city shall accept and consider nomination for habitat areas and species to be designated as locally important on an annual basis.

(b) Habitats and species to be designated shall exhibit at least one of the criteria in [subsections \(2\)\(b\)\(i\) to \(iii\) of this section](#) and shall meet criteria in [subsections \(2\)\(b\)\(iv\) and \(v\)](#) of this section.

(i) Local populations of native species are in danger of extirpation based on existing trends, including:

(A) Local populations of native species that are likely to become endangered; or

(B) Local populations of native species that are vulnerable or declining; or
(ii) The species or habitat has recreation, commercial, game, tribal, or other special value; or

(iii) Long-term persistence of a species is dependent on the protection, maintenance, and/or restoration of the nominated habitat; and

(iv) Protection by other county, state, or federal policies, laws, regulations, or nonregulatory tools is not adequate to prevent degradation of the species or habitat in the city; and

(v) Without protection, there is a likelihood that the species or habitat will be diminished over the long term.

(c) Areas nominated to protect a particular habitat or species must represent high-quality native habitat or habitat that either has a high potential to recover to a suitable condition and is of limited availability or provides landscape connectivity which contributes to the designated species or habitat's preservation.

(d) Habitats and species may be nominated for designation by any resident of Marysville.

(e) The petition to nominate an area or a species to this category shall contain all of the following:

(i) A completed SEPA environmental checklist;

(ii) A written statement using best available science to show that nomination criteria in [subsections \(2\)\(b\) and \(c\) of this section](#) are met;

- (iii) A written proposal including specific and relevant protection regulations that meet the goals of this chapter. Management strategies must be supported by the best available science, and where restoration of habitat is proposed, a specific plan for restoration must be provided;
- (iv) Demonstration of relevant, feasible, management strategies that are effective and within the scope of this chapter;
- (v) Provision of species habitat location(s) on a map that works in concert with other city maps;
- (vi) An economic impact (cost/benefit) analysis of proposal;
- (vii) Documentation of public notice methods that the petitioner(s) have used.

Examples of reasonable methods are:

- (A) Posting the property;
- (B) Publishing a paid advertisement in a newspaper or newsletter of circulation in the general area of the proposal, where interested persons may review information on the proposal. Information in the notice must contain a description of the proposal, general location of the affected area and where comments on the proposal may be sent;
- (C) Notification to public or private groups in the affected area that may have an interest in the petition;
- (D) News media articles that have been published concerning the proposal;
- (E) Notices placed at public buildings or bulletin boards in the affected area;
- (F) Mailing of informational flyers to property owners within the affected area;
- (viii) Signatures of all petitioners.
- (g) The community development director shall determine whether the nomination proposal is complete, and if complete, shall evaluate it according to the characteristics enumerated in [subsection \(2\)\(b\)](#) of this section and make a recommendation to the planning commission based on those findings.
- (h) The planning commission shall hold a public hearing for proposals found to be complete and make a recommendation to the city council based on the characteristics enumerated in [subsection \(2\)\(b\) of this section](#).
- (i) Following the recommendation of the planning commission, the city council may hold an additional public hearing and shall determine whether to designate a habitat or species of local importance.
- (j) Approved nominations will be subject to the provisions of this title.

22E.010.180 Regulated activities in habitats.

The following activities within a habitat and its associated buffer as set forth in [MMC 22E.010.220](#), or outside a habitat or buffer but with the potential of adversely affecting the habitat or buffer, shall be regulated pursuant to the standards of this chapter:

- (1) Removing, excavating, disturbing or dredging soil, sand, gravel, minerals, organic matter or materials of any kind.
- (2) Dumping, discharging or filling with any material.
- (3) Draining, flooding or disturbing the water level or water table.
- (4) Driving piling or placing obstructions.
- (5) Constructing, reconstructing, demolishing or altering the size of any structure or infrastructure.
- (6) Construction of any on-site sewage disposal system, or other underground facilities, except exempted activities.
- (7) Destroying or altering habitat vegetation through clearing, harvesting, shading or planting vegetation that would alter the character of a habitat or buffer, the shade and protection for a stream, or that is a source of food or habitat for fish or game.
- (8) Activities that result in significant changes in water temperature, physical or chemical characteristics of water sources, including water quantity and quality, soil flow, natural ground contours, or pollutants.
- (9) Relocation of the natural course of the stream, or modification of the flow characteristics thereof.
- (10) Any other activity potentially affecting a habitat or habitat buffer not otherwise exempt from the provisions of this chapter.

22E.010.190 Exemptions from fish and wildlife regulations.

- (1) See [MMC 22E.010.320](#) for general exemptions to all critical areas.
- (2) The following activities shall be exempt from the provisions of this chapter related to fish and wildlife habitat provided they are conducted using best management practices:
 - (a) Activities involving artificially created habitat, including but not limited to grass-lined swales, irrigation and drainage ditches, detention facilities such as ponds, and landscape features, except for habitat areas created as mitigation and artificially created habitats used by salmonid fish;
 - (b) Prior to the effective date of the ordinance codified in this chapter, all commercial and industrial uses, developments, and activities which exist within the stream buffers shall be allowed to continue in existence, and to be repaired, maintained and remodeled as provided in [Chapter 22C.100 MC, Nonconforming Situations](#).
- (3) No private or public entity shall undertake exempt activities as listed in this section prior to providing the city written notification of the entity's intent to proceed with an exempt activity. The city shall verbally confirm whether or not the activity is exempt and where needed provide written authorization within 30 days of receipt of the written notice.
- (4) In case of any questions as to whether a particular activity is exempt under provisions of this section, the community development department's determination shall prevail and be determinative.
- (5) Notwithstanding the exemption provided by this section, any otherwise exempt activities occurring in or near critical habitat areas shall comply with the intent of these standards and shall consider on-site alternatives that avoid or minimize potential habitat impacts. Exempt activities shall use reasonable methods (i.e., best management practices) to avoid potential impacts to fish and wildlife habitat.

22E.010.200 Fish and wildlife habitat inventory maps.

- (1) The approximate location and extent of habitat areas within the city of Marysville's planning area are shown on the maps adopted as part of this chapter. These maps shall be used as a general guide only for the assistance of property owners and other interested parties; boundaries are generalized. The actual type, extent and boundaries of habitat areas shall be determined by a qualified scientific professional according to the procedures, definitions and criteria established by this chapter. In the event of any conflict between the habitat location or type shown on the city's fish and wildlife conservation areas maps and the criteria or standards of this chapter, the criteria and standards resulting from the field investigation shall control.
- (2) The following maps are hereby adopted for the purpose set forth in [subsection \(1\) of this section](#):
 - (a) City of Marysville Fish and Wildlife Conservation Areas Map;
 - (b) Washington Department of Fish and Wildlife Priority Habitat and Species Maps;
 - (c) Washington State Department of Natural Resources, Official Water Type Reference Maps, as amended;
 - (d) Washington State Department of Natural Resources Natural Heritage Program mapping data;
 - (e) Washington State Department of Natural Resources State Natural Area Preserves and Natural Resources Conservation Area Maps;
 - (f) Washington State Department of Health Annual Inventory of Shellfish Harvest Areas;
 - (g) Anadromous and resident salmonid distribution maps contained in the Habitat Limiting Factors Reports published by the Washington Conservation Commission;
 - (h) Washington State Department of Natural Resources Puget Sound Intertidal Habitat Inventory Maps; and
 - (i) Washington State Department of Natural Resources Shorezone Inventory or Northwest Straits Commission – Snohomish County Marine Resources Committee Inventory.

22E.010.210 Classification of fish and wildlife habitat areas.

- (1) Streams. Streams shall be classified according to the stream type system as provided in [WAC 222-16-030](#), Stream Classification System, as amended.
 - (a) Type S Stream. Those streams, within their ordinary high water mark, as inventoried as "shorelines of the state" under Chapter 90.58 RCW and the rules promulgated pursuant thereto.
 - (b) Type F Stream. Those stream segments within the ordinary high water mark that are not Type S streams, and which are demonstrated or provisionally presumed to be used by salmonid fish. Stream segments which have a width of two feet or greater at the ordinary high water mark and

have a gradient of 16 percent or less for basins less than or equal to 50 acres in size, or have a gradient of 20 percent or less for basins greater than 50 acres in size are provisionally presumed to be used by salmonid fish. A provisional presumption of salmonid fish use may be refuted at the discretion of the community development director where any of the following conditions are met:

(i) It is demonstrated to the satisfaction of the city that the stream segment in question is upstream of a complete, permanent, natural fish passage barrier, above which no stream section exhibits perennial flow;

(ii) It is demonstrated to the satisfaction of the city that the stream segment in question has confirmed, long-term, naturally-occurring water quality parameters incapable of supporting salmonid fish;

(iii) Sufficient information about a geomorphic region is available to support a departure from the characteristics described above for the presumption of salmonid fish use, as determined in consultation with the Washington Department of Fish and Wildlife, the Department of Ecology, affected tribes, or others;

(iv) The Washington Department of Fish and Wildlife has issued a hydraulic project approval pursuant to [RCW 77.55.100](#), which includes a determination that the stream segment in question is not used by salmonid fish;

(v) No salmonid fish are discovered in the stream segment in question during a stream survey conducted according to the protocol provided in the Washington Forest Practices Board Manual, Section 13, Guidelines for Determining Fish Use for the Purpose of Typing waters under [WAC 222-16-031](#); provided, that no unnatural fish passage barriers have been present downstream of said stream segment over a period of at least two years.

(c) Type Np Stream. Those stream segments within the ordinary high water mark that are perennial and are not Type S or Type F streams. However, for the purpose of classification, Type Np streams include intermittent dry portions of the channel below the uppermost point of perennial flow. If the uppermost point of perennial flow cannot be identified with simple, nontechnical observations (see Washington Forest Practices Board Manual, Section 23), then said point shall be determined by a qualified professional selected or approved by the city.

(d) Type Ns Stream. Those stream segments within the ordinary high water mark that are not Type S, Type F, or Type Np streams. These include seasonal streams in which surface flow is not present for at least some portion of a year of normal rainfall that are not located downstream from any Type Np stream segment.

22E.010.220 Fish and wildlife habitat buffer areas.

(1) The establishment of buffer areas shall be required for regulated activities in or adjacent to habitat areas. Buffers shall consist of an undisturbed area of native vegetation established to protect the integrity, functions and values of the affected habitat. Activities within buffers should not result in any net loss of the functions and values associated with streams and their buffers.

(a) The following buffer widths are established:

| Streams | Buffer |
|--|---|
| Type S Quilceda Creek Ebey Slough Except in the following location north and south shore of Ebey Slough between the western city limits and 47th Ave. NE | 200 feet 100 feet 25 feet |
| Type F Gissberg Twin Lakes | 150 feet Lake setbacks correspond to county park boundaries |
| Type Np | 100 feet |
| Type Ns | 50 feet |

(b) Federal, State, and Local Habitats and Species.

(i) Except for waters subject to [subsection \(1\)\(a\) of this section](#), and bald eagles subject to [subsection \(1\)\(b\)\(ii\) of this section](#), the establishment of buffer areas may be required for regulated activities in or adjacent to federal, state, and local species and habitat areas as designated pursuant to [MMC 22E.010.170 and 22E.010.210](#). Buffers shall consist of an undisturbed area of native vegetation established to protect the integrity, functions and values of the affected habitat. Required buffer widths shall reflect the sensitivity of the habitat and the type and intensity of human activity proposed to be conducted nearby. Buffers shall be determined by the department based on information in the biological/habitat report, a habitat management plan approved by the Department of Fish and Wildlife supplemented by its own investigations, the intensity and design of the proposed use, and adjacent uses and activities. Buffers are not intended to be established or to function independently of the habitat they are established to protect. Buffers shall be measured from the edge of the habitat area.

(ii) Bald eagle habitat shall be protected pursuant to the Washington State Bald Eagle Protection Rules ([WAC 232-12-292](#)).

(2) Where existing buffer area plantings provide minimal vegetative cover and cannot provide the minimum water quality or habitat functions, buffer enhancement shall be required. Where buffer enhancement is required, a plan shall be prepared that includes plant densities that are not less than five feet on center for shrubs and 10 feet on center for trees. Monitoring and maintenance of plants shall be required in accordance with [MMC 22E.010.260](#). Existing buffer vegetation is considered "inadequate" and will require enhancement through additional native plantings and removal of nonnative plants when:

(a) Nonnative or invasive plant species provide the dominate cover;

(b) Vegetation is lacking due to disturbance and stream resources could be adversely affected; or

(c) Enhancement planting in the buffer could significantly improve buffer functions. If according to the buffer enhancement plan, additional buffer mitigation is not sufficient to protect the habitat, the city shall require larger buffers where it is necessary to protect habitat functions based on site-specific characteristics.

(3) Measurement of Buffers.

(a) Stream Buffers. All buffers shall be measured from the ordinary high water mark as identified in the field or, if that cannot be determined, from the top of the bank. In braided channels and alluvial fans, the ordinary high water mark or top of bank shall be determined so as to include the entire stream feature;

(b) Combination Buffers. Any stream adjoined by a wetland or other adjacent habitat area shall have the buffer which applies to the wetland or other habitat area unless the stream buffer requirements are more expansive.

(4) Buffer widths may be modified by averaging buffer widths as set forth herein:

(a) Buffer width averaging shall be allowed only where the applicant demonstrates to the community development department that the averaging will not impair or reduce habitat, water quality purification and enhancement, stormwater detention, ground water recharge, shoreline protection and erosion protection and other functions of the stream and buffer, that lower intensity land uses would be located adjacent to areas where buffer width is reduced, and that the total area contained within the buffer after averaging is no less than that contained within the standard buffer prior to averaging;

(b) Notwithstanding the reductions permitted in [subsection \(4\)\(a\) of this section](#), buffer widths shall not be reduced by more than 25 percent of the required buffer.

(5) The buffer width stated in [subsection \(2\) of this section](#) shall be increased in the following circumstances:

(a) When the adjacent land is susceptible to severe erosion and erosion control measures will not effectively prevent adverse habitat impacts; or

(b) When the standard buffer has minimal or degraded vegetative cover that cannot be improved through enhancement; or

(c) When the minimum buffer for a habitat extends into an area with a slope of greater than 25 percent, the buffer shall be the greater of:

(i) The minimum buffer for that particular habitat; or

(ii) Twenty-five feet beyond the point where the slope becomes 25 percent or less.

(6) The community development director may authorize the following low impact uses and activities provided they are consistent with the purpose and function of the habitat buffer and do not

detract from its integrity may be permitted within the buffer depending on the sensitivity of the habitat involved. To the extent reasonably practicable, examples of uses and activities which may be permitted in appropriate cases include pedestrian trails, viewing platforms, interpretive signage, utility easements and the installation of underground utilities pursuant to best management practices. Uses permitted within the buffer shall be located in the outer 25 percent of the buffer.

(7) Trails and Open Space. For walkways and trails, associated open space in critical buffers located on public property, or on private property where easements or agreements have been granted for such purposes all of the following criteria shall be met.

(a) The trail, walkway, and associated open space shall be consistent with the comprehensive parks, recreation, and open space master plan. The city may allow private trails as part of the approval of a site plan, subdivision or other land use permit approvals.

(b) Trails and walkways shall be located in the outer 25 percent of the buffer, i.e., the portion of the buffer that is farther away from the critical area. Exceptions to this requirement may be made for:

(i) Trail segments connecting to existing trails where an alternate alignment is not practical. Public access points to water bodies spaced periodically along the trail.

(c) Enhancement of the buffer area is required where trails are located in the buffer. Where enhancement of the buffer area adjacent to a trail is not feasible due to existing high quality vegetation, additional buffer area or other mitigation may be required.

(d) Trail widths shall be a maximum width of 10 feet. Trails shall be constructed of permeable materials; provided, that impervious materials may be allowed if pavement is required for handicapped or emergency access, or safety, or is a designated nonmotorized transportation route or makes a connection to an already dedicated trail, or reduces potential for other environmental impacts.

(8) Allowed Activity – Utilities in Streams. New utility lines and facilities may be permitted to cross water bodies in accordance with an approved supplemental stream/lake study, if they comply with the following criteria:

(a) Fish and wildlife habitat areas shall be avoided to the maximum extent possible; and

(b) The utility is designed consistent with one or more of the following methods:

(i) Installation shall be accomplished by boring beneath the scour depth and hyporheic zone of the water body and channel migration zone; or

(ii) The utilities shall cross at an angle greater than 60 degrees to the centerline of the channel in streams perpendicular to the channel centerline; or

(iii) Crossings shall be contained within the footprint of an existing road or utility crossing; and

(c) New utility routes shall avoid paralleling the stream or following a down-valley course near the channel; and

(d) The utility installation shall not increase or decrease the natural rate of shore migration or channel migration; and

(e) Seasonal work windows are determined and made a condition of approval; and

(f) Mitigation criteria of [MMC 22E.010.240](#) are met.

(9) Storm water management facilities, such as biofiltration swales and dispersion facilities, may be located within the outer 25 percent of buffers only if they will have no negative effect on the functions and purpose the buffers serve for the fish and wildlife habitat areas. Storm water detention ponds shall not be allowed in fish and wildlife habitat areas or their required buffers.

(10) For subdivisions and short subdivisions, the applicable wetland and associated buffer requirements for any development or redevelopment of uses specifically identified in, and approved as part of, the original subdivision or short subdivision application shall be those requirements in effect at the time that the complete subdivision or short subdivision application was filed; provided, that for subdivisions this provision shall be limited to final plats reviewed and approved under Ordinance 1928, "Sensitive Areas," adopted December 14, 1992, or as amended at the time of final plat approval. However, at the discretion of the community development director a buffer enhancement plan may be required in accordance with [subsection \(3\)](#) of this section if the wetland or buffer has become degraded or is currently not functioning or if the wetland and/or buffer may be negatively affected by the proposed new development.

(11) Minor additions or alterations such as decks and small additions less than 120 square feet, interior remodels, or tenant improvements which have no impact on the habitat or buffer shall be exempt from the buffer enhancement requirements.

(12) Required buffers shall not deny all reasonable use of property. A variance from buffer width requirements may be granted by the city of Marysville upon a showing by the applicant that:

(a) There are special circumstances applicable to the subject property or to the intended use such as shape, topography, location or surroundings that do not apply generally to other properties and which support the granting of a variance from the buffer width requirements; and

(b) Such buffer width variance is necessary for the preservation and enjoyment of a substantial property right or use possessed by other similarly situated property but which because of special circumstances is denied to the property in question; and

(c) The granting of such buffer width variance will not be materially detrimental to the public welfare or injurious to the property or improvement; and

(d) The granting of the buffer width variance will not materially affect the subject habitat area; and

(e) If a variance application for stream buffers is merged with a pending shoreline development permit application, the applicant shall pay the city a single fee equal to the amount of the shoreline permit; and

(f) No variance from stream buffers shall be granted which is inconsistent with the policies of the Shoreline Management Act of the State of Washington and the master program of the city of Marysville.

(g) Best available science, as set forth in [MMC 22E.010.040](#), shall be taken into consideration in the granting of a buffer width variance.

22E.010.230

Fish and wildlife habitat alteration and mitigation.

After careful consideration of the potential impacts and a determination that impacts are unavoidable, unavoidable impacts to streams, associated fish buffers and wildlife habitat not exempt under [MMC 22E.010.190](#), granted a variance under [MMC 22E.010.220](#), or meeting the criteria for a reasonable use exception in [MMC 22E.010.380](#) shall be mitigated as follows:

(1) Adverse impacts to habitat functions and values shall be mitigated to the extent feasible and reasonable. Mitigation actions by an applicant or property owner shall occur in the following preferred sequence:

(a) Avoiding the impact altogether by not taking a certain action or parts of actions;

(b) Minimizing impacts by limiting the degree of magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts;

(c) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;

(d) Reducing or eliminating the impact over time by preservation and maintenance operations;

(e) Compensating for the impact by replacing or providing substitute resources or environments;

(f) Monitoring the impact and taking appropriate corrective measures in accordance with [MMC 22E.010.250](#).

(2) Where impacts cannot be avoided, the applicant or property owner shall implement other appropriate mitigation actions in compliance with the intent, standards and criteria of this section. In an individual case, these actions may include consideration of alternative site plans and layouts, reductions in the density or scope of the proposal, and implementation of the performance standards listed in [MMC 22E.010.250](#).

(3) Alteration of habitat and their buffers may be permitted by the community development department subject to the following standards:

(a) Type S and F Streams. Alterations of Type S streams shall be avoided, subject to the reasonable use provisions of this chapter and conformance with the city of Marysville shoreline management master program. Access to the shoreline will be permitted for water dependent and water-oriented uses subject to the mitigation sequence referred to in subsections (1) and (2) of this section;

(b) Type F, Np and Ns Streams. Alterations of Type F, Np and Ns streams may be permitted; provided, that the applicant mitigates adverse impacts consistent with the performance standards and other requirements of this chapter and provided that no overall net loss will occur in stream functions and fish habitat;

(c) Relocation of a stream may occur only when it is part of an approved mitigation or rehabilitation plan, and will result in equal or better habitat and water quality, and will not diminish the flow capacity of the stream.

22E.010.240 Fish and wildlife mitigation standards, criteria and plan requirements.

(1) Location and Timing of Mitigation.

(a) Mitigation shall be provided on-site, except where on-site mitigation is not scientifically feasible or practical due to physical features of the property. The burden of proof shall be on the applicant to demonstrate that mitigation cannot be provided on-site.

(b) When mitigation cannot be provided on-site, mitigation shall be provided in the immediate vicinity of and within the same watershed as the permitted activity on property owned or controlled by the applicant, where practical and beneficial to the fish and wildlife habitat resources. When possible, this means within the same watershed as the location of the proposed project.

(c) In-kind mitigation, as defined in [Chapter 22A.020 MMC](#), shall be provided, except when the applicant demonstrates and the community development department concurs that greater functional and habitat value can be achieved through out-of-kind mitigation, as defined in [Chapter 22A.020 MMC](#).

(d) Only when it is determined by the community development department that [subsections \(1\)\(a\), \(b\), and \(c\) of this section](#) are inappropriate or impractical shall off-site, out-of-kind mitigation be considered.

(e) Any agreed-upon proposal shall be completed before initiation of other permitted activities, unless a phased or concurrent schedule has been approved by the community development department.

22E.010.250 Fish and wildlife habitat performance standards and incentives.

(1) The habitat performance standards and criteria contained in this section shall be incorporated into plans submitted for regulated activities. It is recognized that in specific situations, all the listed standards may not apply or be feasible to implement or individual standards may conflict, in which case the standard(s) most protective of the environment shall apply.

(a) Consider habitat in site planning and design;

(b) Locate buildings and structures in a manner that preserves and minimizes adverse impacts to important habitat areas;

(c) Integrate retained habitat into open space and landscaping;

(d) Where possible, consolidate habitat and vegetated open space in contiguous blocks;

(e) Locate habitat contiguous to other habitat areas, open space or landscaped areas to contribute to a continuous system or corridor that provides connections to adjacent habitat areas and allows movement of wildlife;

(f) Use native species in any landscaping of disturbed or undeveloped areas and in any enhancement of habitat or buffers;

(g) Emphasize heterogeneity and structural diversity of vegetation in landscaping, and food-producing plants beneficial to wildlife and fish;

(h) Remove and control any noxious or undesirable species of plants and animals;

(i) Preserve significant trees and snags, preferably in groups, consistent with achieving the objectives of these standards;

(j) Buffers shall be surveyed, staked, and fenced with erosion control and/or clearing limits fencing prior to any construction work, including grading and clearing, that may take place on the site; and

(k) Temporary erosion and sedimentation controls, pursuant to an approved plan, shall be implemented during construction.

(2) A landscape plan shall be submitted consistent with the requirements, goals, and standards of this chapter. The plan shall reflect the report prepared pursuant to [MMC 22E.010.320](#).

(3) As an incentive to encourage preservation of secondary and tertiary habitat, as those terms are defined in these regulations, the net amount of landscaping required by the city of Marysville may be reduced by .25 acres for each one acre of secondary or tertiary habitat and buffer preserved on the site; however, that amount cannot exceed 50 percent of the amount of required landscaping. The reduction shall be calculated on the basis of square feet of habitat preserved or enhanced and square feet of landscaping required. Habitat and habitat buffer that is enhanced by the applicant may also

qualify for this reduction. Preservation of secondary or tertiary habitat shall be assured by the execution of an easement or other protective device acceptable to the city of Marysville.

22E.010.260 Fish and wildlife habitat monitoring program and contingency plan.

(1) A monitoring program shall be implemented to determine the success of the mitigation project and any necessary corrective actions. This program shall determine if the original goals and objectives are being met.

(2) A contingency plan shall be established for compensation in the event that the mitigation project is inadequate or fails. Security for performance in accordance with [Chapter 22G.040 MMC](#) is required for performance, monitoring and maintenance in accordance with the terms of the contingency plan. The security for performance shall be for a period of five years, but the community development director may agree to reduce the security in phases in proportion to work successfully completed over the duration of the security.

(3) The monitoring program shall consist of the following:

(a) During monitoring, best available scientific procedures shall be used as the method of establishing the success or failure of the project;

(b) For vegetation determinations, permanent sampling points shall be established;

(c) For measurement purposes, vegetative success shall equal 80 percent survival of planted trees and shrubs and 80 percent cover of desirable understory or emergent species;

(d) Monitoring reports shall be submitted on the current status of the mitigation project to the community development department. The reports shall be prepared by a qualified scientific professional and reviewed by the city, shall to the extent applicable include monitoring information on wildlife, vegetation, water quality, water flow, storm water storage and conveyance, and existing or potential degradation, and shall be produced on the following schedule:

(i) At time of construction;

(ii) Thirty days after planting;

(iii) Early in the growing season of the first year;

(iv) End of the growing season of first year;

(v) Twice the second year; and

(vi) Annually thereafter;

(e) Monitoring shall occur three, four, or five growing seasons, depending on the complexity of the fish and wildlife habitat system. The monitoring period will be determined by the community development department and specified in writing prior to the implementation of the site plan;

(f) The applicant shall, if necessary, correct for failures in the mitigation project;

(g) The applicant shall replace dead or undesirable vegetation with appropriate plantings, based on the approved planting plan or [MMC 22E.010.150](#);

(h) The applicant shall repair damage caused by erosion, settling, or other geomorphological processes;

(i) Correction procedures shall be approved by a qualified scientific professional and the community development department; and

(j) In the event of failure of the mitigation project, the applicant shall redesign the project and implement the new design.

Article IV. Geologic Hazard Areas

22E.010.270 Applicability to geologic hazards.

(1) The provisions of this section shall apply to any activity that occurs in, on or within 300 feet of (as indicated on the geologic hazard maps), or potentially affects, a geologic hazard area subject to this chapter unless otherwise exempt. These activities may include, but are not limited to, the following:

(a) Removing, excavating, disturbing or dredging soil, sand, gravel, minerals, organic matter or materials of any kind;

(b) Dumping, discharging or filling with any material;

(c) Driving pilings or placing obstructions;

(d) Constructing, reconstructing, demolishing or altering the size of any structure or infrastructure;

- (e) Construction of any on-site sewage disposal system, or other underground facilities, except exempted activities;
 - (f) Draining, flooding, or disturbing the water level or water table, or changing the flow of water through the site;
 - (g) Destroying or altering vegetation through clearing or harvesting; and
 - (h) Any other activity potentially affecting a geologic hazard area or its setback not otherwise exempt from the provisions of this section.
- (2) To avoid duplication, the following permits and approvals shall be subject to and coordinated with the requirements of this section: clearing and grading; subdivision or short subdivision; building permit; planned unit development; shoreline substantial development; variance; conditional use permit; other permits leading to the development or alteration of land; and rezones.

22E.010.280 Geologic hazard inventory map.

The approximate location and extent of geologic hazard areas within the city of Marysville's planning area are shown on the critical areas maps adopted as part of this chapter. These maps should be used as a general guide only for the assistance of property owners and as information for the public. They are intended to indicate where potentially hazardous conditions are believed to exist. Boundaries are generalized; field investigation and analysis by a qualified scientific professional is required to confirm the actual presence or absence of a critical area. In the event of any conflict between the location, designation or classification of geologic hazard area shown on the Snohomish County Tomorrow geologic hazard areas maps and criteria or standards of this chapter, the criteria and standards resulting from the field investigation shall prevail.

22E.010.290 Alteration of geologic hazard areas and development limitations.

- (1) The city of Marysville may approve, condition or deny proposals as appropriate based on the degree to which significant risks posed by critical hazard areas to public and private property and to public health safety can be mitigated. The objective of mitigation measures shall be to render a site containing a critical geologic hazard site as safe as one not containing such hazard or to develop a structure that will tolerate the hazard. Enforceable guarantees shall be required where appropriate. Conditions may include limitations of proposed uses, modification of density, alteration of site layout and other appropriate changes to the proposal. Where potential impacts cannot be effectively mitigated, or where the risk to public health, safety and welfare, public or private property, or important natural resources is significant notwithstanding mitigation, the proposal shall be denied.
- (2) Assurances required of the applicant and the qualified scientific professional for geologic hazard areas may at the discretion of the community development director include:
- (a) A letter from the geotechnical engineer or geologist who prepared the required studies stating that the risk of damage from the proposal, both on-site and off-site, are minimal subject to the conditions set forth in the report, that the proposal will not increase the risk of occurrence of the geologic hazard, and that measures to eliminate or reduce risks have been incorporated into its recommendations; or
 - (b) A letter from the applicant, or the owner of the property if not the applicant, stating its understanding and acceptance of any risk of injury or damage associated with development of the site and agreeing to notify any future purchasers of the site, portions of the site, or structures located on the site of the geologic hazard; or
 - (c) A legally enforceable agreement, which shall be recorded as a covenant and noted on the face of the deed or plat, and executed in a form satisfactory to the city of Marysville, acknowledging that the site is located in a geologic hazard area; the risks associated with development of such site; and a waiver and release of any and all claims of the owner(s), their directors, employees, successors or assigns against the city of Marysville for any loss, damage or injury, whether direct or indirect, arising out of issuance of development permits for the proposal.
- (3) When alteration of a geologic hazard area is approved, the city of Marysville at the discretion of the community development director and/or city engineer may require security for performance or security for maintenance in accordance with the standards of [Chapter 22G.040 MMC](#).

22E.010.300 Setbacks from geologic hazards.

- (1) A setback shall be established from the edge of any geologic hazard area that is not approved for alteration pursuant to these regulations. The setback shall consist of an undisturbed area of natural

vegetation; if the site has previously been disturbed, the setback area shall be revegetated pursuant to an approved planting plan.

(2) Required setbacks shall typically vary between 25 and 50 feet; the width of the setback, determined by the community development director and/or city engineer or his or her representative, shall reflect the sensitivity of the geologic hazard area and the types and density of uses and activities proposed on or adjacent to the geologic hazard area. In determining an appropriate setback width, the community development director or his or her representative shall consider the recommendations contained in any technical report prepared by the applicant's geotechnical engineer. Building and structures shall be set back 10 feet from the edge of the setback.

- (a) Setbacks shall be measured as follows:
 - (i) Critical landslide hazard areas: from the edges of the hazard area as identified in the geologic hazard area report;
 - (ii) Critical recharge areas: from the edge of the recharge area as identified in the geologic hazard area report;
- (b) Setbacks may be reduced to a minimum of 10 feet when the applicant demonstrates through technical studies that the reduction will adequately protect the geologic hazard and the proposed development.

22E.010.310 Geologic hazard performance standards.

(1) The following standards shall be implemented in all proposals occurring in or adjacent to geologic hazard areas:

- (a) Geotechnical studies shall be prepared to identify and evaluate potential hazards and to formulate mitigation measures;
- (b) Construction methods will reduce or not adversely affect geologic hazards;
- (c) Site planning should minimize disruption of existing topography and natural vegetation;
- (d) Disturbed areas should be replanted as soon as feasible pursuant to a previously approved landscape plan;
- (e) Use of retaining walls that allow maintenance of existing natural slope areas are preferred over graded slopes;
- (f) Setbacks shall be surveyed, staked, and fenced with erosion control and/or clearing limits fencing prior to any construction work, including grading and clearing, may take place on the site;
- (g) Temporary erosion and sedimentation controls, pursuant to an approved plan, shall be implemented during construction;
- (h) A master drainage plan should be prepared for large projects;
- (i) Undevelopable geologic hazard areas larger than one-half acre should be placed in a separate tract;
- (j) A monitoring program should be prepared for construction activities permitted in geologic hazard areas; and
- (k) Development shall not increase instability or create a hazard to the site or adjacent properties, or result in a significant increase in sedimentation or erosion;
- (l) The proposal will not adversely impact other critical areas;
- (m) At the discretion of the community development director, peer review of geotechnical reports may be required prior to locating a critical facility within a geologic hazard area.

(2) Required setbacks shall not deny all reasonable use of property. A variance from setback width requirements may be granted by the city of Marysville upon a showing:

- (a) There are special circumstances applicable to the subject property or to the intended use such as shape, topography, location or surroundings that do not apply generally to other properties and which support the granting of a variance from the setback requirements; and
- (b) Such setback with variance is necessary for the preservation and enjoyment of a substantial property right or use possessed by other similarly situated property but which because of special circumstances is denied to the property in question; and
- (c) The granting of such setback width variance will not be materially detrimental to the public welfare or injurious to the property or improvement.

Article V. General Information

22E.010.320 General exemptions.

The following activities shall be exempt from the provisions of this chapter provided they are conducted using best management practices:

- (1) Existing and ongoing agricultural activities, as defined in [Chapter 22A.020 MMC](#), and any lands designated long-term commercially significant agricultural lands;
- (2) Maintenance, operation and reconstruction of existing roads, streets, utilities and associated structures; provided, that reconstruction of any structures may not increase the impervious area;
- (3) Normal maintenance, repair and reconstruction of residential or commercial structures; provided, that reconstruction of any structures may not increase the previous floor area;
- (4) Site investigative work and studies necessary for preparing land use applications, including soils tests, water quality studies, wildlife studies and similar tests and investigations; provided, that any disturbance of critical areas shall be the minimum necessary to carry out the work or studies;
- (5) Educational activities, scientific research, and outdoor recreational activities that will not have a significant effect on the habitat area;
- (6) Public agency emergency activities necessary to prevent an immediate threat to public health, safety or property;
- (7) Prior to the effective date of the ordinance codified in this chapter, any of the following activities that have met all conditions of approval in a timely manner and are consistent with the reasonable use provisions of this chapter:
 - (a) Complete applications as defined by the appropriate ordinance or by city policy;
 - (b) Approved plats; and
 - (c) Development of legally created lots which have been recorded with Snohomish County, provided they were reviewed and approved under Ordinance 1928, "Sensitive Areas," adopted December 14, 1992, or as amended at the time of final plat approval; and
- (8) Minor activities not mentioned above and determined by the community development department to pose minimal risk to the public health, safety, general welfare and critical area functions.

22E.010.330

Permit process and application requirements.

- (1) Preapplication Conference. All applicants are encouraged to meet with the community development director of the city of Marysville or his or her representative prior to submitting an application subject to these regulations. The purpose of this meeting shall be to discuss the city of Marysville's critical areas requirements, process and procedures; to review any conceptual site plans prepared by the applicant; to discuss appropriate investigative techniques and methodology; to identify potential impacts and mitigation measures; and to familiarize the applicant with state and federal programs, particularly those pertaining to wetlands. Such conference shall be for the convenience of the applicant and any recommendations shall not be binding on the applicant or the city of Marysville.
- (2) Application Requirements. The information required by this section should be coordinated with reporting requirements required by this section for any other critical areas located on the site.
 - (a) Prior to the issuance of a SEPA threshold determination for a proposal, a wetland determination, wetland delineation report, or fish and wildlife habitat report must be submitted to the city of Marysville for review upon request of the community development director due to inclusion of a portion or all of a site on the habitat or wetland inventory maps prepared by Snohomish County Tomorrow. The purpose of the report is to determine the extent and function of wetlands, and the extent, type, function and value of wildlife habitat on any site where regulated activities are proposed. The report will also be used by the city of Marysville to determine the appropriate wetland, or the sensitivity and appropriate classification of the habitat, appropriate buffering requirements, and potential impacts of proposed activities;
 - (b) In addition, wetland boundaries must be staked and flagged in the field by a qualified scientific professional employing the Washington State Wetlands Identification and Delineation Manual methodology. Field flagging must be distinguishable from other survey flagging on the site. The field flagging must be accompanied by a wetland delineation report;
 - (c) Applicants for activities within geologic hazard areas shall conduct technical studies to: evaluate the actual presence of geologic conditions giving rise to geologic hazards; determine the appropriate hazard category, according to the classification of potential hazards in these regulations; evaluate the safety and appropriateness of proposed activities; and recommend appropriate construction practices, monitoring programs and other mitigation measures required to ensure achievement of the purpose and intent of these regulations. The format of any required reports shall be determined by the city of Marysville;

- (d) The report of any critical area shall include the following information:
- (i) Vicinity map;
 - (ii) A map showing:
 - (A) Site boundary, property lines, and roads;
 - (B) Internal property lines, rights-of-way, easements, etc.;
 - (C) Existing physical features of the site including buildings, fences, and other structures, roads, parking lots, utilities, water bodies, etc.;
 - (D) Contours at the smallest readily available intervals, preferably at five-foot intervals; and
 - (E) For large (50 acres or larger) or complex projects with wetlands or habitat areas, an aerial photo with overlays displaying the site boundaries and wetland delineation or habitat area(s) may be required. Generally, an orthophotograph at a scale of one inch equals 400 feet or greater (such as one inch equals 200 feet) should be used. If an orthophotograph is not available, the center of a small scale (e.g., one inch equals 2,000 feet) aerial photograph enlarged to one inch equals 400 feet may be used;
 - (iii) The report for any critical area must describe:
 - (A) Locational information including legal description and address;
 - (B) All natural and manmade features within 150 feet of the site boundary;
 - (C) General site conditions including topography, acreage, and water bodies or wetlands; and
 - (D) Identification of any areas that have previously been disturbed or degraded by human activity or natural processes;
 - (e) In addition to the general report requirements, a report on wetlands shall include the following information:
 - (i) Delineated wetland boundary;
 - (ii) The wetland boundary must be accurately drawn at an appropriate engineering scale such that information shown is not cramped or illegible. The drawing shall be prepared by a surveyor. Generally, a scale of one foot equals 40 feet or greater (such as one inch equals 20 feet) should be used. Existing features must be distinguished from proposed features;
 - (iii) Site designated on the wetlands areas maps prepared for Snohomish County Tomorrow, July 1991;
 - (iv) Hydrologic mapping showing patterns of water movement into, through, and out of the site area;
 - (v) Location of all test holes and vegetation sample sites, numbered to correspond with flagging in the field and field data sheets;
 - (vi) Field data sheets from the federal manual, numbered to correspond with sample site locations as staked and flagged in the field; and describe:
 - (vii) Specific descriptions of plant communities, soils and hydrology;
 - (viii) A summary of existing wetland function and value; and
 - (ix) A summary of proposed wetland and buffer alterations, impacts, and the need for the alterations as proposed. Potential impacts may include but are not limited to loss of flood storage potential, loss of wildlife habitat, expected decreases in species diversity or quantity, changes in water quality, increases in human intrusion, and impacts on associated wetland or water resources. If alteration of a Category I, II, III, or VI wetland is proposed, a wetland mitigation plan is required according to the standards of [MMC 22E.010.150](#);
 - (f) In addition to the general report requirements, a report on fish and wildlife habitats shall include the following information. The level of detail contained in the report shall generally reflect the size and complexity of the proposal and the function and value of the habitat. The community development department may require field studies at the applicant's expense in appropriate cases:
 - (i) A map of vegetative cover types, reflecting the general boundaries of different plant communities on the site;
 - (ii) A description of the species typically associated with the cover types, including an identification of any critical wildlife species that might expected to be found;
 - (iii) The results of searches of DNB's Natural Heritage and WDFW's Nongame Data System databases, if available; and
 - (iv) Additional information on species occurrence available from the city of Marysville or Snohomish County; and describe:
 - (v) The layers, diversity and variety of habitat found on the site;

- (vi) Identification of edges between habitat types and any species commonly associated with that habitat;
- (vii) The location of any migration or movement corridors;
- (viii) A narrative summary of existing habitat functions and values; and
- (ix) A summary of proposed habitat and buffer alterations, impacts and mitigation.

Potential impacts may include but are not limited to clearing of vegetation, fragmentation of wildlife habitat, expected decreases in species diversity or quantity, changes in water quality, increases in human intrusion, and impacts on wetlands or water resources;

(g) In addition to the general report requirements, a report on geologic hazards shall include the following information:

- (i) A characterization of soils, geology and drainage;
- (ii) A characterization of ground water conditions including the presence of any public or private wells in the immediate vicinity; and
- (iii) An analysis of proposed clearing, grading and construction activities, including construction scheduling; potential direct and indirect, on-site and off-site impacts from the development; and proposed mitigation measures, including any special construction techniques, monitoring or inspection program, erosion or sedimentation programs (during and after construction), and surface water management controls.

In order to determine the geologic hazard classification project, applicants shall also include in their report to the city of Marysville a description prepared by a qualified scientific professional that reviews the site history and results of a surface reconnaissance. The purpose of these regulations is to require a level of study and analysis commensurate with potential risks associated with geologic hazards on particular sites and for particular proposals.

Depending on the particular geologic hazard, geologic hydrologic, and topographic studies may be required. The appropriate report(s) and level of analysis shall be determined using the following guidelines:

- (A) Moderate Landslide Hazard Areas.
 1. Review site history and available information;
 2. Conduct a surface reconnaissance of the site and adjacent areas; and
 3. Conduct subsurface exploration if indicated by [subsections \(2\)\(g\)\(iii\)\(A\)\(1\) and \(2\)](#) of this section as determined by the applicant's qualified scientific professional and the city;

- (B) High Landslide Hazard Areas.
 1. Review site history and available information;
 2. Conduct a surface reconnaissance of the site and adjacent areas;
 3. Conduct subsurface exploration suitable to the site and proposal to assess geohydrologic conditions;
 4. Recommend surface water management controls during construction and operation;
 5. Proposed construction scheduling; and
 6. Recommendations for site monitoring and inspection during construction;

- (C) Very High Landslide Hazard Areas.
 1. Development is prohibited in these areas;
- (D) Moderate and High Erosion Hazard Areas.
 1. Review site history and available information;
 2. Conduct a surface reconnaissance of the site and adjacent areas; and
 3. Identify surface water management, erosion and sediment controls appropriate to the site and proposal;

- (E) Seismic Hazard Areas.
 1. For one- and two-story single-family structures, conduct an evaluation of site response and liquefaction potential based on the performance of similar structures under similar foundation conditions; and
 2. For all other proposals, conduct an evaluation of site response and liquefaction potential including sufficient subsurface exploration to provide a site coefficient (S) for use in the static lateral force procedure described in the Uniform Building Code.

(3) Permit Process. This section is not intended to create a separate permit process for development proposals. To the extent possible, the city of Marysville shall consolidate and integrate the review and processing of critical area-related aspects of proposals with other land use and environmental considerations and approvals.

22E.010.340 Selection of qualified scientific professional and city review of report.

For the purposes of this chapter, qualified scientific professionals not licensed by the state of Washington for the activities they are to perform in evaluation of critical areas shall be reviewed by and their names appear on an approved list prepared by the city of Marysville.

(1) Biannually the city shall advertise requests for qualifications for qualified scientific professionals for each area established by this chapter: wetlands, fish habitat areas/streams, wildlife habitat areas, and geologic hazard areas. The community development director shall establish a panel to review the firm and individual's qualifications and references. Each qualified scientific professional shall have completed at least a four-year degree program and meet the minimum requirements contained within the definitions section. The panel shall recommend to the community development director the list of consultants, as selected by the panel, that are qualified to evaluate each type of critical area identified in this chapter. There shall be a minimum of 12 qualified scientific professionals for each of the three categories. The list shall be adopted within 60 days of the adoption of the ordinance codified in this chapter and 60 days of January 1st biannually thereafter.

(2) The adopted lists of qualified scientific professionals shall be available at the community development department.

(3) Reports meeting the criteria as required by this chapter, submitted by a qualified scientific professional, included on the adopted list should be accepted by the city of Marysville. However, the city retains the right to have a separate review of the reports, and at its discretion may retain a qualified scientific professional at the city's expense to review and confirm the applicant's reports, studies, and plans. Applicants may choose to use other consultants which they feel meet the definition of qualified scientific professionals given; however, the city retains the right to have a separate review of their reports, and at its discretion may retain a qualified scientific professional at the applicant's expense to review and confirm the applicant's reports, studies, and plans.

22E.010.350 Land divisions.

All proposed divisions of land which include regulated critical areas shall comply with the following procedures and development standards:

(1) New lots shall contain at least one building site, including access, that is suitable for development and is not within the regulated critical area or its associated buffer or setback.

(2) A regulated critical area and its associated buffer or setback shall be placed in a separate tract on which development is prohibited, protected by execution of an easement given to the city of Marysville, or dedicated to the city of Marysville at the discretion of the city of Marysville. The location and limitations associated with the critical area and its associated buffer or setback shall be shown on the face of the deed or plat applicable to the property and shall be recorded with the Snohomish County auditor.

22E.010.360 On-site density transfer for critical areas.

(1) An owner of a residential site or property containing critical areas may be permitted to transfer the density attributable to the critical area and associated buffer area or setback to another noncritical portion of the same site or property, subject to the limitations of this section and other applicable regulations. In the case of streams, only the density attributable to the buffer may be transferred.

(2) Up to 100 percent of the density that could be achieved on the critical area and buffer portion of the site, excluding stream channels, can be transferred to the noncritical area portion, subject to:

(a) The density limitations of the underlying zone must be applied;

(b) The bulk and dimensional standards of the next higher zoning classification may be utilized to accommodate the transfers in density;

(c) The noncritical, nonbuffer portion of the site is not constrained by another environmentally critical areas regulated by this code.

(3) An on-site density transfer shall meet the requirements and follow the procedures of [Chapter 22G.090 MMC, Subdivisions and Short Subdivisions](#).

22E.010.370 Fencing and signage requirements.

Wetland fencing and signage adjacent to a regulated wetland or stream corridor shall be required. Two rail fencing shall be constructed with pressure treated posts and rails and cemented into the ground with either cedar or treated rails. Alternative materials may be used subject to approval by the city. Signs designating the presence of an environmentally sensitive area shall be posted along the buffer boundary. The signs shall be posted at a minimum rate of one every 100 lineal feet.

22E.010.380 Building setbacks.

Unless otherwise provided, buildings and other structures shall be set back a distance of 15 feet from the edges of all critical area buffers or from the edges of all critical areas, if no buffers are required. The following may be allowed in the building setback area:

- (1) Landscaping;
- (2) Uncovered decks;
- (3) Building overhangs, if such overhangs do not extend more than 18 inches into the setback area; and
- (4) Impervious ground surfaces, such as driveways and patios; provided, that such improvements may be subject to water quality regulations as adopted.

22E.010.390 General procedural provisions.

- (1) Interpretation and Conflicts. Any question regarding interpretation of these regulations shall be resolved pursuant to the procedures set forth in [Chapter 22G.060 MMC](#), relating to the hearing examiner.
- (2) Appeals from Permit Decisions. Appeals from permit decisions shall be governed by the procedures set forth in [Chapter 22G.060 MMC](#), relating to the hearing examiner.

22E.010.400 Penalties and enforcement.

Penalty and enforcement provided in this section shall not be deemed exclusive, and the city may pursue any remedy or relief it deems appropriate.

- (1) Any person, firm, corporation, or association or any agent thereof who violates any of the provisions of this chapter shall be guilty of a misdemeanor punishable by a fine not to exceed \$1,000. It shall be a separate offense for each and every day or portion thereof during which any violation of any provisions of this chapter is committed.
- (2) Any person, firm, corporation, or association of any agent thereof who violates any of the provisions of this chapter shall be liable for all damages to public or private property arising from such violation, including the cost of restoring the affected area to an equivalent or improved condition prior to the violation occurring. If an equivalent condition cannot be provided, the violator shall be subject to a fine in an amount equal to the value to the damage to the environmentally critical area, determined using best available methods of calculating the value of vegetation, land, and water resources.
- (3) Restoration shall include, but not be limited to, the replacement of all improperly removed groundcover with species similar to those which were removed or other approved species such that the biological and habitat values will be replaced, improper fill removed, and slope stabilized. Studies by the qualified experts shall be submitted to determine the conditions which were likely to exist on the lot prior to the illegal alteration.
- (4) Restoration shall also include installation and maintenance of interim and emergency erosion control measures until such time as the restored groundcover and vegetation reach sufficient maturation to function in compliance with the performance standards adopted by the city.
- (5) The city shall stop work on any existing permits and halt the issuance of any or all future permits or approvals for any activity which violates the provisions of this chapter until the property is fully restored in compliance with this chapter and all penalties are paid.
- (6) Notwithstanding the other provisions provided in this chapter, anything done contrary to the provisions of this chapter or the failure to comply with the provisions of this chapter shall be and the same is hereby declared to be a public nuisance.

The city is authorized to apply to any court of competent jurisdiction, for any such court, upon hearing and for cause shown, may grant a preliminary, temporary or permanent injunction restraining any person, firm, and/or corporation from violating any of the provisions of this chapter and compelling compliance with the provisions thereof. The violator shall comply with the injunction and pay all cost incurred by the city in seeking the injunction.

22E.010.410 General savings provisions –Reasonable use determination.

(1) The standards and regulations of this section are not intended, and shall not be construed or applied in a manner, to deny all reasonable economic use of private property. If an applicant demonstrates to the satisfaction of the city of Marysville that strict application of these standards and the utilization of cluster techniques, planned unit development, and transfer of development rights would deny all reasonable economic use of its property, development may be permitted subject to appropriate conditions, derived from this chapter, as determined by the community development director.

(2) An applicant for relief from strict application of these standards shall demonstrate the following:

(a) That no reasonable use with less impact on the critical area and buffer or setback is feasible and reasonable; and

(b) That there is no feasible and reasonable on-site alternative to the activities proposed, considering possible changes in site layout, reductions in density and similar factors; and

(c) That the proposed activities, as conditioned, will result in the minimum possible impacts to critical area and buffer or setback; and

(d) That all reasonable mitigation measures have been implemented or assured; and

(e) That all provisions of the city's regulations allowing density transfer on-site and off-site have been considered; and

(f) That the inability to derive reasonable economic use is not the result of the applicant's actions.

22E.010.420 No special duty created.

(1) It is the purpose of this chapter to provide for the health, welfare, and safety of the general public, and not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of this chapter. No provisions or term used in this chapter is intended to impose any duty whatsoever upon the city or any of its officers, agents, or employees for whom the implementation or enforcement of this chapter shall be discretionary and not mandatory.

(2) Nothing contained in this chapter is intended to be, nor shall be, construed to create or from the basis for any liability on the part of the city or its officers, agents, and employees for any injury or damage resulting from the failure of any premises to abate a nuisance or to comply with the provisions of this chapter or be a reason or a consequence of any inspection, notice or order, in connection with the implementation or enforcement of this chapter, or by reason of any action of the city related in any manner to enforcement of this chapter by its officers, agents or employees.

Chapter 22E.020**FLOODPLAIN MANAGEMENT****Sections:****Article I.**

22E.020.010

Article II.

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Article I.**Purpose****22E.020.010****Statement of purpose.**

It is the purpose of this chapter to promote the public health, safety and general welfare, and to minimize public and private losses due to flood conditions in specific areas by provisions designed:

- (1) To protect human life and health;
 - (2) To minimize expenditure of public money and costly flood control projects;
 - (3) To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
 - (4) To minimize prolonged business interruptions;
 - (5) To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in areas of special flood hazard;
 - (6) To help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future flood blight areas;
 - (7) To ensure that potential buyers are notified that property is in an area of special flood hazard;
- and
- (8) To ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.

Article II.**General Provisions****22E.020.020****Lands to which this chapter applies.**

This chapter shall apply to all areas of special flood hazards within the jurisdiction of the city of Marysville.

22E.020.030**Basis for establishing the areas of special flood hazard.**

The areas of special flood hazard identified by the Federal Insurance Administration in a scientific and engineering report entitled "The Flood Insurance Study for the City of Marysville" dated September 16, 2005, as amended, with accompanying Flood Insurance Rate Maps (FIRM), as amended, is adopted by reference and declared to be a part of this chapter. The Flood Insurance

Study is on file at the Marysville Community Development Department, 80 Columbia Avenue, Marysville, Washington. The best available information for flood hazard area identification as outlined in [MMC 22E.020.100\(2\)](#) shall be the basis for regulation until a new FIRM is issued which incorporates the date utilized under [MMC 22E.020.100\(2\)](#).

22E.020.040 Penalties for noncompliance.

No structure or land shall hereafter be constructed, located, extended, converted or altered without full compliance with the terms of this chapter and other applicable regulations. Violation of the provisions of this chapter by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a misdemeanor. Any person who violates this chapter or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than \$1,000 or imprisoned for not more than 90 days, or both, for each violation, and in addition shall pay all costs and expenses involved in the case. Nothing herein contained shall prevent the city from taking such other lawful action as is necessary to prevent or remedy any violation.

22E.020.050 Abrogation and greater restrictions.

This chapter is not intended to repeal, abrogate or impair any existing easements, covenants or deed restrictions. However, where this chapter and another chapter, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

22E.020.060 Interpretation.

In the interpretation and application of this chapter, all provisions shall be:

- (1) Considered as minimum requirements;
- (2) Liberally construed in favor of the governing body;
- (3) Deemed neither to limit nor repeal any other powers granted under state statutes.

22E.020.070 Warning and disclaimer of liability.

The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by manmade or natural causes. This chapter does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This chapter shall not create liability on the part of the city, any officer or employee thereof, or the Federal Insurance Administration, for any flood damages that result from reliance on this chapter or any administrative decision lawfully made thereunder.

Article III. Administration

22E.020.080 Establishment of development permit.

A development permit shall be obtained before construction or development begins within any area of special flood hazard established in [MMC 22E.020.030](#). The permit shall be for all structures, including manufactured homes, as set forth in [Chapter 22A.020 MMC](#), Definitions, and for all other development, including fill and other activities, also as set forth in [Chapter 22A.020 MMC](#), Definitions. Application for a development permit shall be made on forms furnished by the building official and may include, but not be limited to: plans in duplicate drawn to scale showing the nature, location, dimensions and elevations of the area in question; existing or proposed structures, fill, storage of materials; drainage facilities, and the location of the foregoing. Specifically, the following information is required:

- (1) Elevation in relation to mean sea level of the lowest floor (including basement) of all structures;
- (2) Elevation in relation to mean sea level to which any structure has been floodproofed;
- (3) Certification by a registered professional engineer or architect that the floodproofing methods for any nonresidential structure meet the floodproofing criteria in [MMC 22E.020.150](#); and
- (4) Description of the extent to which a watercourse will be altered or relocated as a result of the proposed development.

22E.020.090 Designation of the building official.

The building official is appointed to administer and implement this chapter by granting or denying development permit applications in accordance with its provisions.

22E.020.100 Duties and responsibilities of building official.

Duties of the building official shall include, but not be limited to:

- (1) Permit Review.
 - (a) Review all development permits to determine that the permit requirements of this chapter have been satisfied;
 - (b) Review all development permits to determine that all necessary permits have been obtained from those federal, state or local governmental agencies from which prior approval is required;
 - (c) Review all development permits in the area of special flood hazard, except in the coastal high hazard area, to determine if the proposed development adversely affects the flood carrying capacity of the area of special flood hazard. For the purposes of this chapter, "adversely affects" means that the cumulative effect of the proposed development when combined with all other existing and anticipated development will increase the water surface elevation of the base flood more than one foot at any point.
- (2) Use of Other Base Flood Data. When base flood elevation data has not been provided in accordance with [MMC 22E.020.030](#), Basis for establishing the areas of special flood hazard, the building official shall obtain, review and reasonably utilize any base flood elevation data available from a federal, state or other source, in order to administer [MMC 22E.020.150](#), Specific standards, [MMC 22E.020.170](#), Manufactured homes, [MMC 22E.020.180](#), Recreational vehicles, and [MMC 22E.020.190](#), Floodways.
- (3) Information to Be Obtained and Maintained.
 - (a) Where base flood elevation data is provided through the Flood Insurance Study or required as in [subsection \(2\) of this section](#), obtain and record the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures, and whether or not the structure contains a basement;
 - (b) For all new or substantially improved floodproofed structures:
 - (i) Verify and record the actual elevation (in relation to mean sea level) to which the structure was floodproofed; and
 - (ii) Maintain the floodproofing certifications required in [MMC 22E.020.180\(3\)](#);
 - (c) Maintain for public inspection all records pertaining to the provisions of this chapter.
- (4) Alteration of Watercourses.
 - (a) Notify adjacent communities and the Washington State Department of Ecology prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administration;
 - (b) Require that maintenance is provided within the altered or relocated portion of the watercourse so that the flood-carrying capacity is not diminished.
- (5) Interpretation of FIRM Boundaries. Make interpretations, where needed, as to exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in [MMC 22E.020.110](#).

Article IV. Variance Procedure**22E.020.110 Appeal board.**

- (1) The city council shall hear and decide appeals and requests for variances from the requirements of this chapter.
- (2) The city council shall hear and decide appeals when it is alleged there is an error in any requirement, decision or determination made by the building official in the enforcement or administration of this chapter.
- (3) Those aggrieved by the decision of the city council, or any taxpayer, may appeal such decision to the Snohomish County Superior Court, as provided by law.
- (4) In passing upon such applications, the city council shall consider all technical evaluations, all relevant factors, standards specified in other sections of this chapter, and:
 - (a) The danger that materials may be swept onto other lands to the injury of others;
 - (b) The danger to life and property due to flooding or erosion damage;
 - (c) The susceptibility of the proposed facility and its contents to flood damage and the effect of such on the individual owner;

- (d) The importance of the services provided by the proposed facility to the community;
 - (e) The necessity to the facility of a waterfront location, where applicable;
 - (f) The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
 - (g) The compatibility of the proposed use with existing and anticipated development;
 - (h) The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
 - (i) The safety or access to the property in times of flood for ordinary emergency vehicles;
 - (j) The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of the wave action, if applicable, expected at the site; and
 - (k) The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.
- (5) Generally, the only condition under which a variance from elevation standard may be issued is for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing [subsections \(4\)\(a\) through \(4\)\(k\)](#) of this section have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases.
- (6) Upon consideration of the factors of [subsection \(4\)](#) of this section and the purposes of this chapter, the city council may attach such conditions to the granting of variances as it deems necessary to further the purposes of this chapter.
- (7) The building official shall maintain the records of all appeal actions and report any variances to the Federal Insurance Administration upon request.

22E.020.120**Conditions for variances.**

- (1) Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in the remainder of this section.
- (2) Variances shall not be issued within a designated floodway if any increase in flood levels during the base flood discharge would result.
- (3) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- (4) Variances shall only be issued upon:
- (a) A showing of good and sufficient cause;
 - (b) A determination that failure to grant the variance would result in exceptional hardship to the applicant;
 - (c) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public as identified in [MMC 22E.020.110\(4\)](#), or conflict with existing local laws or ordinances.
- (5) Variances as interpreted in the National Flood Insurance Program are based on the general zoning law principle that they pertain to a physical piece of property; they are not personal in nature and do not pertain to the structure, its inhabitants, economic or financial circumstances. They primarily address small lots in densely populated residential neighborhoods. As such, variances from the flood elevations should be quite rare.
- (6) Variances may be issued for nonresidential buildings in very limited circumstances to allow a lesser degree of floodproofing than watertight or dry-floodproofing, where it can be determined that such action will have low damage potential, complies with all other variance criteria except [MMC 22E.020.110\(5\)](#), and otherwise complies with [MMC 22E.020.130\(1\) and \(2\)](#) of the general standards.
- (7) Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

Article V. Provisions for Flood Hazard Protection**22E.020.130 General standards.**

In all areas of special flood hazards, the following standards are required:

- (1) Anchoring.
 - (a) All new construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure;
 - (b) All manufactured homes shall be installed using methods and practices which minimize flood damage. For purposes of this requirement, manufactured homes must be elevated and anchored to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame tie to ground anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces;
 - (c) An alternative method of anchoring may involve a system designed to withstand a wind force of 90 miles per hour or greater. Certification must be provided to the building official that this standard has been met.
- (2) Construction Materials and Methods.
 - (a) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage;
 - (b) All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage;
 - (c) Electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities shall be designed and/or otherwise elevated or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
- (3) Utilities.
 - (a) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system;
 - (b) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharge from the systems into floodwaters;
 - (c) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding; and
 - (d) The proposed water well shall be located on high ground that is not in the floodway (WAC 173-160-171).
- (4) Subdivision Proposals.
 - (a) All subdivision proposals shall be consistent with the need to minimize flood damage;
 - (b) All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage;
 - (c) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage; and
 - (d) Where base flood elevation data has not been provided or is not available from another authoritative source, it shall be generated for subdivision proposals and other proposed development which contain at least 50 lots or five acres (whichever is less).

22E.020.140 Review of building permits.

Where elevation data is not available either through the Flood Insurance Study or from another authoritative source [MMC 22E.020.100\(2\)](#), applications for building permits shall be reviewed to assure that proposed construction will be reasonably safe from flooding. The test of reasonableness is a local judgment and includes use of historical data, high water marks, photographs of past flooding, etc., where available. Failure to elevate at least two feet above the highest adjacent grade in these zones may result in higher insurance rates.

22E.020.150 Specific standards.

In all areas of special flood hazards where base flood elevation data has been provided as set forth in [MMC 22E.020.030](#), Basis for establishing the areas of special flood hazard, or [MMC 22E.020.100\(2\)](#), Use of Other Base Flood Data, the following provisions are required:

- (1) Construction or reconstruction of residential structures is prohibited within designated floodways except for:
 - (a) repairs, reconstruction or improvements to a structure which do not increase the ground floor area; and

(b) repairs, reconstruction or improvements to a structure, the cost of which does not exceed 50 percent of the market value of the structure either;

- (i) before the repair, reconstruction or improvement is started, or
- (ii) if the structure has been damaged and is being restored, before the damage occurred.

Work done on structures to comply with existing health, sanitary or safety codes or to structures identified as historic places shall not be included in the 50 percent determination.

(2) New construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated one foot above the base flood elevation.

(3) Electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

(4) New construction and substantial improvement of any nonresidential structure shall either have the lowest floor, including basement, elevated to or above the base flood elevation; or, together with attendant utility and sanitary facilities, shall:

(a) Be floodproofed so that for up to one foot above the base flood elevation the structure is watertight with walls substantially impermeable to the passage of water;

(b) Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and

(c) Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this subsection based on their development and/or review of the structural design, specifications and plans. Such certifications shall be provided to the building official as set forth in [MMC 22E.020.100\(3\)\(b\)](#);

(i) Nonresidential structures that are elevated, not floodproofed, must meet the same standards for space below the lowest floor as described in [subsection \(6\) of this section](#);

(ii) Applicants floodproofing nonresidential buildings shall be notified that flood insurance premiums will be based on rates that are one foot below the floodproofed level (e.g., a building floodproofed to the base flood level will be rated as one foot below).

(5) Encroachments, including fill, new construction, substantial improvements and other developments shall be prohibited in any floodway unless a technical evaluation demonstrates that the encroachments will not result in any increase in flood levels during the occurrence of the base flood discharge.

(6) For all new construction and substantial improvements, fully enclosed areas below the lowest floor that are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect, or must meet or exceed the following minimum criteria: a minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers or other coverings or devices; provided, that they permit the automatic entry and exit of floodwaters.

22E.020.160 Encroachments.

The cumulative effect of any proposed development, when combined with all other existing and anticipated development, shall not increase the water surface elevation of the base flood more than one foot at any point.

22E.020.170 Manufactured homes.

(1) All manufactured homes to be placed or substantially improved on sites:

(a) Outside of a manufactured home park or subdivision;

(b) In a new manufactured home park or subdivision;

(c) In an expansion to an existing manufactured home park or subdivision; or

(d) In an existing manufactured home park or subdivision on which a manufactured home has incurred "subdivision damage" as the result of a flood;

shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated one foot above the base flood elevation and be securely anchored to an adequately designed foundation system to resist flotation, collapse and lateral movement.

- (2) Manufactured homes to be placed or substantially improved on sites in an existing manufactured home park or subdivision that are not subject to the above manufactured home provisions be elevated so that either:
- (a) The lowest floor of the manufactured home is elevated one foot above the base flood elevation; or
 - (b) The manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade and be securely anchored to an adequately designed foundation system to resist flotation, collapse and lateral movement.

22E.020.180 **Recreational vehicles.**

Recreational vehicles placed on sites are required to either:

- (1) Be on the site for fewer than 180 consecutive days;
- (2) Be fully licensed and ready for highway use, on its wheels or jacking system, be attached to the site only by quick disconnect type utilities and security devices, and have no permanently attached additions; or
- (3) Meet the requirements of MMC 22E.020.170 and the elevation and anchoring requirements for manufactured homes.

22E.020.190 Floodways.

Located within areas of special flood hazard established in MMC 22E.020.030 are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of floodwaters which carry debris, potential projectiles, and erosion potential, the following provisions apply:

- (1) Prohibit encroachments, including fill, new construction, substantial improvements, and other development unless certification by a registered professional engineer is provided demonstrating that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.
- (2) Construction or reconstruction of residential structures is prohibited within designated floodways, except for:
 - (a) repairs, reconstruction, or improvements to a structure which do not increase the ground floor area, and
 - (b) repairs, reconstruction or improvements to a structure, the cost of which does not exceed 50 percent of the market value of the structure either:
 - (i) before the repair, or reconstruction is started, or
 - (ii) if the structure has been damaged, and is being restored, before the damage occurred.

Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions or to structures identified as historic places shall not be included in the 50 percent.

- (3) If [subsection \(1\)](#) of this section is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of [Article V](#), Provisions for Flood Hazard Protection.

22E.020.200 **Critical facility.**

Construction of new critical facilities shall be, to the extent possible, located outside the limits of the special flood hazard area (SFHA) (100-year floodplain). Construction of new critical facilities shall be permissible within the SFHA if no feasible alternative site is available. Critical facilities constructed within the SFHA shall have the lowest floor elevated three feet or more above the level of the base flood elevation (100-year) at the site. Floodproofing and sealing measures must be taken to ensure that toxic substances will not be displaced by or released into floodwaters. Access routes elevated to or above the level of the base flood elevation shall be provided to all critical facilities to the extent possible.

Chapter 22E.030**STATE ENVIRONMENTAL POLICY ACT (SEPA)****Sections:**

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22E.030.010**Purpose.**

The purposes of these procedures are:

- (1) To encourage productive and enjoyable harmony between people and their environment;
- (2) To promote efforts that will prevent or eliminate damage to the environment and biosphere;
- (3) To stimulate the health and welfare of people;
- (4) To enrich the understanding of ecological systems and natural resources that are important to the City of Marysville, the State of Washington, and the nation;
- (5) To establish procedures to implement the provisions of Chapter 43.21C RCW, the State Environmental Policy Act, and Chapter 197-11 WAC, SEPA Rules;
- (6) To provide environmental information to City decision-makers;
- (7) To create a process that is efficient and effective;
- (8) To promote certainty with respect to the requirements of SEPA and to integrate SEPA procedures with decision-making.

22E.030.020**Scope.**

The City of Marysville hereby establishes these procedures to implement the State Environmental Policy Act, herein referred to as "SEPA", Chapter 43.21C RCW, consistent with those rules under Chapter 197-11 WAC. The procedures are promulgated under WAC 197-11-020(1), which states: "Each agency must have its own SEPA procedures consistent with" Chapter 197-11 WAC and Chapter 43.21C RCW. Consistent with WAC 197-11-020(3), these provisions, Chapter 197-11 WAC, and Chapter 43.21C RCW must be read together as a whole to comply with the spirit and letter of the law.

22E.030.030**Policy.**

The City of Marysville adopts WAC 197-11-030, as now existing or hereinafter amended, by reference, subject to the following:

- (1) Under WAC 197-11-030(1) and (2), the terms "agency" and "agencies" shall include the City of Marysville and its respective departments.
- (2) Under WAC 197-11-030(2)(a), the text is revised to:
Interpret and administer the policies, regulations, and laws of the State of Washington and applicable ordinances and resolutions of the City of Marysville in accordance with the policies set forth in RCW 43.21C and WAC 197-11.

22E.030.040**Definitions.**

Terms defined under [Chapter 22A.020 MMC](#) shall apply to this chapter, subject to the following:

- (1) Terms Undefined by [Chapter 22A.020 MMC](#). Where [Chapter 22A.020 MMC](#) does not define terms, the City of Marysville adopts those definitions under [WAC 197-11-040](#), [197-11-220](#), and [197-11-700 through 197-11-799](#), as existing and as hereafter amended.
- (2) Resolving conflicts between [Chapter 22A.020 MMC](#) and SEPA Definitions. Where a conflict exists between those terms under [Chapter 22A.020 MMC](#) and [WAC 197-11-040](#) and [197-11-700 through 197-11-799](#), the more specific definition that meets the minimum standards and spirit of [Chapter 197-11 WAC](#) shall apply.

22E.030.050 Forms.

The City of Marysville adopts the following forms and sections of [Chapter 197-11 WAC](#), as now existing or hereinafter amended, by reference:

WAC

- [197-11-960](#) Environment checklist
- [197-11-965](#) Adoption notice
- [197-11-970](#) Determination of nonsignificance (DNS)
- [197-11-980](#) Determination of significance and scoping notice (DS)
- [197-11-985](#) Notice of assumption of lead agency status
- [197-11-990](#) Notice of action

22E.030.060 Lead Agency.

The City of Marysville adopts the following sections of [Chapter 197-11 WAC](#), as now existing or hereinafter amended, by reference:

- (1) [WAC 197-11-050](#);
- (2) [WAC 197-11-922 through 197-11-948](#).

22E.030.070 Responsible Official.

For those proposals for which the City is a lead agency, the responsible official shall be the City of Marysville Community Development Director. For all proposals for which the City is a lead agency, the Community Development Director shall make the threshold determination, supervise scoping and preparation of any required EIS and perform any other functions assigned to the lead agency or responsible official by those sections of the SEPA rules that have been adopted by reference.

22E.030.080 Purpose and General Requirements.

The City of Marysville adopts [WAC 197-11-055 through 197-11-100](#), as now existing or hereinafter amended, by reference, subject to the following:

- (1) Analyzing Similar Actions in a Single Document. The City adopts the optional provision of [WAC 197-11-060\(3\)\(c\)](#).
- (2) Time Guidelines. Under [197-11-055\(2\)\(b\)](#), the responsible official will make a threshold determination within 90 days of determining that a completed application has been submitted, consistent with [WAC 197-11-055\(2\)\(d\)](#), subject to:
 - (a) The calculation of the number of days in subsection (2)(b) of this section shall not include those days between the mailing of any request for additional information and re-submittal.
 - (b) The responsible official shall not make a threshold determination when there is not adequate information to make a threshold determination within 90 days. When there is not adequate information to make a determination at the end of 90 days, the responsible official shall notify the applicant in writing regarding the information required to make a threshold determination.
- (3) Content of SEPA Checklist – Responsibility. The applicant shall prepare the initial environmental checklist, unless the responsible official specifically elects to prepare the checklist. The responsible official shall make a reasonable effort to verify the information in the checklist and supporting documentation and shall have the authority to determine the final content of the checklist.
- (4) Additional Information for SEPA Checklist – Timelines. The responsible official may set reasonable deadlines for the submittal of information, studies, or documents that are necessary for, or subsequent to, threshold determinations. Unless an extension is requested in writing and approved, failure to meet such deadlines shall cause the application to be deemed withdrawn.

22E.030.090

Categorical Exemptions, Threshold Determinations, and Enforcement of Mitigating Measures.

The City of Marysville adopts [WAC 197-11-300 through 197-11-390](#), [WAC 197-11-800 through 197-11-890](#), and [WAC 197-11-908](#) as now existing or hereinafter amended, by reference, subject to the following:

(1) Establishment of Thresholds for Categorically Exempt Actions. The following exempt threshold levels are hereby established pursuant to [WAC 197-11-800\(1\)\(c\)](#) for the exemptions in [WAC 197-11-800\(1\)\(b\)](#):

(a) The construction or location of any residential structures of less than or equal to 9 dwelling units;

(b) The construction of a barn, loafing shed, farm equipment storage building, produce storage or packing structure, or similar agricultural structure, covering less than or equal to 10,000 square feet, and to be used only by the property owner or his or her agent in the conduct of farming the property. This exemption shall not apply to feed lots;

(c) The construction of an office, school, commercial recreational, service or storage building with less than or equal to 12,000 square feet of gross floor area, and with associated parking facilities designed for less than or equal to 40 automobiles;

(d) The construction of a parking lot designed for less than or equal to 40 automobiles;

(e) Any landfill or excavation of less than or equal to 500 cubic yards throughout the total lifetime of the fill or excavation; and any fill or excavation classified as a Class I, II, or III forest practice under [RCW 76.09.050](#) or regulations thereunder.

(2) Environmentally Critical Areas. The Marysville Shoreline Environments Map and the Critical Areas Maps adopted pursuant to [Title 22E MMC](#) designate the location of environmentally sensitive areas within the City and are adopted by reference. For each environmentally sensitive area, the exemptions within [WAC 197-11-800](#) that are inapplicable for the area are (1), (2)(d), (2)(e), (6)(a) and (24)(a) through (g). Unidentified exemptions shall continue to apply within environmentally sensitive areas of the City.

(a) **Lands Covered by Water.** Certain exemptions do not apply on lands covered by water, and this remains true regardless of whether or not lands covered by water are mapped.

(b) Treatment. The City shall treat proposals located wholly or partially within an environmentally critical area no differently than other proposals under this chapter, making a threshold determination for all such proposals. The City shall not automatically require an EIS for a proposal merely because it is proposed for location in an environmentally critical area.

(3) **Responsibility for Determination of Categorical Exempt Status.** The determination of whether a proposal is categorically exempt shall be made by the responsible official.

(4) Mitigation Measures. Modifications to a SEPA checklist or other environmental documentation that result in substantive mitigating measures shall follow one of the following processes:

(a) The responsible official may notify the applicant of the requested modifications to the proposal and identify the concerns regarding unmitigated impacts. The applicant may elect to revise or modify the environmental checklist, application, or supporting documentation. The modifications may include different mitigation measures than those requested by the responsible official; however, acceptance of the proposed measures is subject to subsequent review and approval by the responsible official.

(b) The responsible official may make a mitigated determination of nonsignificance (MDNS), identifying mitigating measures. The MDNS may be appealed by the applicant pursuant to [MMC 22E.030.180](#).

(c) The responsible official may identify mitigating measures in a letter and mail that letter to the applicant. In writing, the applicant may acknowledge acceptance of these measures as mitigating conditions. The acknowledgement shall be incorporated into the application packet as supporting environmental documentation or as an addendum to the environmental checklist.

(5) **Enforcing Mitigation Measures.** Pursuant to [WAC 197-11-350\(7\)](#), the City hereby adopts the following procedures for the enforcement of mitigation measures:

(a) Incorporation of Representations Made by Applicant into MDNS or DNS and Approval. Representations made in the environmental checklist and supporting documentation shall be considered as the foundation of any decision or recommendation of approval of the action. As such, the responsible official relies on this documentation in making a decision on a proposal. Unless specifically revised by the responsible official or applicant, those statements, representations, and mitigating measures contained in the environmental checklist, application, and supporting

documentation shall be considered material conditions of any approval. Mitigating measures shall only be included on a DNS under the following circumstances:

(i) When the UDC does not provide adequate regulations to mitigate for an identified impact,

AND, when any one of the following circumstances or combination of circumstances exists:

(ii) When such conditions are not specifically written in the environmental checklist, application, or supporting information,

OR

(iii) When the responsible official determines that the proposed conditions or representations contained within that information do not adequately address impacts from a proposal.

(b) Modifications to a Proposal – Responsible Official May Withdraw Threshold Determination. If, at anytime, the proposal or proposed mitigation measures are substantially changed, or if proposed mitigation measures are withdrawn, then the responsible official shall review the threshold determination and, if necessary, may withdraw the threshold determination and issue a revised determination, including a determination of significance (DS), as deemed appropriate.

(c) Enforcement of Mitigation Measures. Mitigation measures that are identified in an environmental checklist, development application, supporting documentation, an EIS or an MDNS shall be considered material conditions of the permit or approval that is issued by the reviewing department. As such, failure to comply with these measures may be enforceable through the enforcement provisions that regulate the proposal.

22E.030.100 Planned Actions.

The City of Marysville adopts WAC 197-11-164 through 197-11-172, as now existing or hereinafter amended, by reference. Planned actions shall be adopted by ordinance or resolution following the process established under Title 22G MMC.

22E.030.110 Environmental Impact Statements and Other Environmental Documents.

The City of Marysville adopts WAC 197-11-400 through 197-11-460 and 197-11-600 through 197-11-640, as now existing or hereinafter amended, by reference, subject to the following:

(1) Pursuant to WAC 197-11-408(2)(a), all comments on a DS and scoping notices shall be in writing, except where a public meeting on EIS scoping occurs pursuant to WAC 197-11-410(1)(b).

(2) Pursuant to WAC 197-11-420, 197-11-620, and 197-11-625, the responsible official shall be responsible for preparation and content of an EIS and other environmental documents. The responsible official shall contract with consultants, as necessary, for the preparation of environmental documents and EISs. The responsible official may consider the opinion of the applicant regarding the qualifications of the consultant, but the responsible official shall retain sole authority for selecting persons or firms to author, co-author, provide special services or otherwise participate in the preparation of required environmental documents.

(3) Consultants or sub-consultants contracted by the City to prepare environmental documents for a private development proposal:

(a) Shall not act as agents for the applicant in preparation or acquisition of associated underlying permits or actions;

(b) Shall not have a financial interest in the proposal for which the environmental documents is being prepared; and

(c) Shall not perform any work nor provide any services for the applicant in connection with or related to the proposal.

22E.030.120 Comments and Public Notice.

The City of Marysville adopts WAC 197-11-500 through 197-11-570, as now existing or hereinafter amended, by reference, subject to the following:

(1) Official comments shall be submitted in writing to the contact person on the threshold determination. E-mail comments that are e-mailed to the contact person on the threshold determination may be accepted as official comments.

(2) If required, public notice shall comply with the requirements for the underlying permit as specified in Chapter 22G.010 MMC Article II – Public Notice Requirements.

(3) The responsible official may require further notice if deemed necessary to provide adequate public notice of a pending action. Failure to require further or alternative notice shall not be a violation of any notice procedure.

22E.030.130 Use of Existing Environmental Documents.

The City of Marysville adopts [WAC 197-11-600 through 197-11-640](#), as now existing or hereinafter amended, by reference.

22E.030.140 Substantive Authority.

(1) The City of Marysville adopts [WAC 197-11-650 through 197-11-660](#), [WAC 197-11-900 through 197-11-906](#), and [WAC 197-11-158](#), as now existing or hereinafter amended, by reference.

(2) For the purposes of [RCW 43.21C.060](#) and [WAC 197-11-660\(a\)](#), the following policies, plans, rules, regulations, and all amendments thereto, are designated as potential bases for the exercise of the City's substantive authority under SEPA, subject to the provisions of [RCW 43.21C.240](#):

- (a) [Chapter 43.21C RCW](#), State Environmental Policy Act;
- (b) Marysville Comprehensive Plan;
- (c) Six-Year Transportation Improvement Program;
- (e) [Chapter 6.76 MMC](#), Noise Regulations;
- (e) [MMC Title 7](#), Health & Sanitation;
- (f) [MMC Title 9](#), Fire;
- (g) [MMC Title 11](#), Traffic;
- (h) [MMC Title 12](#), Streets & Sidewalks;
- (i) [MMC Title 14](#), Water & Sewers;
- (j) [MMC Title 16](#), Building;
- (k) [MMC Title 22](#), Unified Development Code;
- (l) All transportation improvement programs adopted by the City Council pursuant to [Chapter 39.92 RCW](#);
- (m) All capital facilities projects contained within the Marysville Comprehensive Plan;
- (n) Interlocal Agreement between Snohomish County and the City of Marysville on Reciprocal Mitigation of Transportation Impacts;
- (o) Interlocal Agreement between the City of Marysville and Snohomish County Concerning Annexation and Urban Development within the Marysville Urban Growth Area;
- (p) The formally designated SEPA policies of other affected agencies or jurisdictions when there is an agreement with the affected agency or jurisdiction which specifically addresses impact identification, documentation, and mitigation and which references the environmental policies formally designated by the agency or jurisdiction for the exercise of SEPA authority.

22E.030.150 SEPA/GMA Integration.

The City of Marysville adopts [WAC 197-11-210 through 197-11-235](#), as now existing or hereinafter amended, by reference.

22E.030.160 Ongoing Actions.

Pursuant to [WAC 197-11-916](#), unless otherwise provided for herein, the provisions of [Chapter 197-11 WAC](#) shall apply to all elements of SEPA compliance, including modifying and supplementing an EIS, initiated after the effective date of the ordinance codified in this title.

22E.030.170 Responsibility as Consulted Agency.

Pursuant to [WAC 197-11-912](#), all requests from other agencies that the City of Marysville consult on threshold investigations, the scope process, EISs or other environmental documents shall be submitted to the Community Development Director. The Community Development Director shall be responsible for coordination with affected City departments and for compiling and transmitting the City of Marysville's response to such requests for consultation.

22E.030.180 Appeals.

The City of Marysville adopts [WAC 197-11-680](#), with the following clarifications:

(1) Any agency or aggrieved person may appeal the procedures or substance of an environmental determination of the responsible official under SEPA as follows:

(a) Only one administrative appeal of a threshold determination or of the adequacy of an EIS is allowed; successive administrative appeals on these issues within the same agency are not allowed. This limitation does not apply to administrative appeals before another agency.

(b) A DNS. Written notice of such an appeal shall be filed with the responsible official within 15 days after the date of issuance of the DNS. The appeal hearing shall be consolidated with

the hearing(s) on the merits of the governmental action for which the environmental determination was made.

(c) A DS. Written notice of the appeal shall be filed with the responsible official within 15 days after the date of issuance of the DS. The appeal shall be heard by the city council within 30 days thereafter.

(d) The Adequacy of an EIS. Written notice of appeal shall be filed with the responsible official within 15 days after the issuance of the final EIS. The appeal hearing shall be consolidated with the hearing(s) on the merits of the governmental action for which the EIS was issued.

(e) Appeals of intermediate steps under SEPA (e.g., lead agency determination, scoping, draft EIS adequacy) shall not be allowed.

(f) For any appeal under this section, the city shall provide for a record that shall consist of the following:

- (i) Findings and conclusions;
- (ii) Testimony under oath; and
- (iii) A taped or written transcript.

(g) Determination by the responsible official shall carry substantial weight in any appeal proceeding.

(2) Notice. Whenever there is a final action by the City Council for which compliance with SEPA is required and for which a statute or ordinance establishes a time limit for commencing judicial appeal, the City shall give official notice as required by [WAC 197-11-680\(5\)](#).

(3) No agency or person may seek judicial review of environmental determinations made pursuant to SEPA unless such agency or person has first appealed such environmental determinations using the administrative procedure set forth above.

Chapter 22E.040 DOWNTOWN PLANNED ACTIONS

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22E.040.010 Purpose.

The city council declares that the purpose of this chapter is to:

- (1) Combine environmental analysis with land use planning;
- (2) Streamline and expedite the land use permit process by relying on completed and existing detailed environmental analysis for certain land uses allowed in downtown Marysville;
- (3) Set forth a procedure designating certain project actions within downtown Marysville as planned actions consistent with [RCW 43.21C.031](#);
- (4) Provide the public with an understanding of planned actions and how the city will process planned actions;
- (5) Adopt the supplemental environmental impact statement for the downtown master plan (SEIS) as a planned action document that provides a framework for encouraging development proposals within the planned action area described in [MMC 22E.040.030 \(1\)](#) ("planned action projects") that are consistent with the goals and policies of the city of Marysville comprehensive plan and the city of Marysville downtown master plan; and
- (6) Apply the city's development codes together with the SEIS and mitigation framework described in [MMC 22E.040.030](#) to expedite and simplify processing planned action developments, consistent with [RCW 43.21C.240](#) and [WAC 197-11-158](#).

22E.040.020 Findings.

The city council finds that:

- (1) A subarea plan (downtown master plan or downtown plan) has been prepared and adopted by the council under the provisions of the Growth Management Act, Chapter [36.70A RCW](#), for the geographic area located within the downtown planning area commonly known as the downtown.
- (2) The downtown master plan is consistent with the Marysville comprehensive plan and provides for the planned build-out of the downtown over a 20-year planning period.
- (3) A supplemental environmental impact statement has been prepared pursuant to [Chapter 43.21C RCW](#) in conjunction with the adoption of the downtown master plan.
- (4) The downtown plan and SEIS have addressed all the significant environmental impacts associated with the land uses allowed by the applicable development regulations and standards as described in the plan.
- (5) The thresholds described in the downtown plan and SEIS are adequate to identify significant adverse environmental impacts.
- (6) The mitigation measures contained in the mitigation document, Attachment A to the ordinance codified in this chapter, together with the city's development regulations and standards, are adequate to mitigate the significant adverse environmental impacts anticipated by development consistent with the downtown plan.
- (7) A streamlined process will benefit the public, adequately protect the environment, and enhance the economic redevelopment of the downtown.
- (8) Public involvement and review of the downtown plan and SEIS have been extensive and adequate to ensure a substantial relationship to the public interest, health, safety, and welfare.
- (9) The uses allowed by the city's development regulations in the zoning classifications in the downtown will implement the downtown plan.
- (10) This chapter shall be known as the "downtown planned actions" ordinance or chapter.

22E.040.030 Procedure and criteria for evaluating and determining projects as planned actions.

- (1) Land uses and activities described in the downtown master plan and SEIS, subject to the thresholds described therein and the mitigation measures described in the mitigation document

attached to [Ordinance No. 2787](#) as [Attachment A](#), may be determined to be planned actions consistent with [RCW 43.21C.031](#) and [WAC 197-11-164](#) to [197-11-172](#) and pursuant to this chapter.

(2) Applications for project permit or approval which may qualify as planned actions under this chapter shall meet the submittal requirements of [Chapter 22G.010 MMC](#) for the particular type of land use action, permit, or approval sought, including submittal of an environmental checklist or other environmental document where required.

(3) Upon receipt of a complete application under the provisions of [Chapter 22G.010 MMC](#), the community development director or designee shall determine whether a particular application for project permit or approval qualifies as a planned action according to the following criteria:

(a) The project is located within the geographic boundaries described in the downtown plan;

(b) The zoning designation of the property where the project is proposed is consistent with those designations analyzed in the downtown plan and SEIS;

(c) The use described in and proposed by the project application is among, or consistent with, the uses and intensity of uses allowed by the city's development regulations and consistent with those uses analyzed in the downtown plan and SEIS;

(d) The proposed project impacts, both project specific and cumulative, are within the thresholds set forth in the downtown plan and SEIS, and summarized in the mitigation document (Attachment A);

(e) The project's probable significant environmental impacts have been adequately addressed and analyzed in the downtown plan and SEIS;

(f) The project implements the goals and policies of the downtown plan and is consistent with the city's comprehensive plan;

(g) The project's probable significant environmental impacts will be adequately mitigated or avoided through the application of the mitigation measures and other conditions required by application of the mitigation document (Attachment A) and other local, state, federal development regulations and standards;

(h) The proposed project complies with all applicable local, state, and federal regulations and development standards;

(i) The proposed project is located within the city of Marysville urban growth area;

(j) The proposed project is not an essential public facility as defined by [RCW 36.70A.200](#).

(4) The community development director shall make a written determination that an application for project permit or approval meets the criteria in [subsection \(3\)](#) of this section. Such written determination shall be issued simultaneously with, and in the same manner as, the written notice of application required by [Chapter 22G.010 MMC Article IV – Land Use Application Requirements](#). The community development director's determination shall be appealable in accordance with [MMC 22G.010.310](#).

(5) If the community development director determines that an application for project permit or approval does not qualify as a planned action, the application shall be reviewed and processed under the applicable procedures for project approval under [Chapter 22G.010 MMC Article V – Code Compliance and Director Review Procedures](#). The community development director shall prescribe a SEPA review procedure consistent with [Chapter 22E.030 MMC](#). Such SEPA review may use or incorporate relevant elements of the environmental analysis in the SEIS or downtown master plan.

(6) If the community development director determines that an application for project permit or approval qualifies as a planned action, the project permit application shall be processed under the administrative procedures set forth in [MMC 22E.040.040](#).

22E.040.040

Review and approval of planned action projects.

(1) An application for project permit or approval, which is designated by the community development director as a planned action under [MMC 22E.040.030](#), shall be subject to approval under the provisions of [Chapter 22G.010 MMC Article V – Code Compliance and Director Review Procedures](#).

(2) No application for project permit or approval designated a planned action under [MMC 22E.040.030](#) shall require the issuance of a threshold determination under SEPA, as provided by [RCW 43.21C.031](#) and [WAC 197-11-172\(2\)\(a\)](#). No procedural SEPA appeals under [Chapter 22E.030 MMC](#) shall be allowed.

(3) An application for project permit or approval designated a planned action under [MMC 22E.040.030](#) shall not be subject to further procedural review under SEPA, but the proposed project may be conditioned to mitigate any adverse environmental impacts which are reasonably likely to result from the project proposal.

(4) The determination to approve, conditionally approve, or deny an application for planned action project permit or approval shall be appealable pursuant to [MMC 22G.010.310](#); provided, that the environmental analysis and mitigation measures or other conditions contained in the mitigation document (Attachment A), the downtown master plan, or SEIS shall be afforded substantial weight.

22E.040.050 Environmental documents.

A planned action designation for a site-specific project action, permit, or approval shall be based upon the environmental analysis contained in the downtown master plan and SEIS. This downtown plan and SEIS, including potential mitigation measures, are hereby incorporated in this chapter and adopted by reference. The mitigation document (Attachment A) is based upon the analysis contained in the SEIS. The mitigation document, together with existing city codes, ordinances, and standards, shall provide the framework for the decision by the city to impose conditions on a planned action project. Other environmental documents and studies listed in the downtown plan and SEIS may also be used to assist in analyzing impacts and determining appropriate mitigation measures in accordance with [MMC 22E.040.040](#).

22E.040.060 Conflict of development regulations and standards.

In the event of conflict between this chapter or any mitigation measures imposed pursuant thereto and any other ordinance or regulation of the city, the provisions of this chapter shall control.

Chapter 22E.050**SHORELINE MANAGEMENT MASTER PROGRAM.****Sections:**

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22E.050.010**Adoption.**

The city council hereby adopts the 2006 Shoreline Master Plan as an element of, and amendment to, the Marysville Growth Management Comprehensive Plan, subject to the modifications set forth in the Department of Ecology’s required changes, which are attached to Ordinance No. 2668 as Attachment B. A copy of the comprehensive plan amendment, entitled the 2006 Shoreline Master Plan, is attached to Ordinance No. 2668 as Exhibit C and is hereby incorporated by this reference.

22E.050.020**Compliance required.**

No developments shall be undertaken on the shorelines of the city except those which are consistent with the policies of this chapter and, after adoption or approval, as appropriate, the applicable guidelines, regulations, or master program.

22E.050.030**Permit required.**

No substantial development shall be undertaken on the shorelines of the city without first obtaining a permit from the city.

22E.050.040**Permit – Fees.**

All persons desiring such a permit shall make application by paying a fee as set out in [Chapter 22G.030 MMC](#) and filing an application with the Community Development Department.

22E.050.050**Application – Form.**

Applications for permits shall be made on forms prescribed by the Community Development Department, and shall contain the name and address of the applicant, a description of the development, the location of the development, and any other relevant information deemed necessary by the Community Development Department.

22E.050.060**Review process.**

The Community Development Department will review the substantial development permit proposals for consistency with:

- (1) The legislative policies stated in [RCW 90.58.020](#), the Shoreline Management Act;
- (2) The Shoreline Management Master Program of the city of Marysville.

22E.050.070**Notice publication.**

Upon receipt of an application for a permit, the city shall cause notice of application to be published at least once a week for two consecutive weeks in a newspaper of general circulation within the city. The second notice shall be published not less than 30 days prior to action by the Community Development Department. The city shall also cause notice of the application to be mailed to each property owner of record within 300 feet of the proposed development. The date of the mailing shall not be less than seven days in advance of the department action.

22E.050.080 Decision.

In the event the community development director determines the substantial development is consistent with the above criteria, the community development director shall so state in written findings, and such shall be filed with the Department of Ecology. In the event the community development director determines the substantial development is inconsistent with the above criteria the application shall be denied. Decisions of the community development director may be appealed on written filing of an appeal by an aggrieved party. Appeals of administrative decisions by the community development director shall be heard by the hearing examiner in accordance with the manner prescribed in [Chapter 22G.010 MMC Article VIII - Appeals](#) and [Chapter 22G.060 MMC](#). The hearing examiner's decision shall be reviewed by the city council pursuant to [MMC 22G.060.130](#).

22E.050.090 Permit – Issuance.

In the event, however, no appeal is filed following the filing of the findings of the planning director, no public hearing is set, then the permit shall issue upon the terms and conditions hereinafter prescribed and as prescribed by the community development director.

22E.050.100 Signing of permit.

The mayor and the city clerk shall sign the permit, and upon such the same shall be deemed issued.

22E.050.110 Commencement of construction – Time lapse.

No one who is issued a permit hereunder shall be authorized to commence construction until 30 days have elapsed from the date that the permit is filed with the Washington State Department of Ecology, or until all review proceedings are terminated if such proceedings were initiated within said 30-day period.

22E.050.120 Time requirements of permit.

The following time requirements shall apply to all substantial development, conditional use and variance permits:

(1) Construction or substantial progress toward construction of a project for which a permit has been granted must be undertaken within two years after the approval of the permit. Substantial progress toward construction shall include, but not be limited to, the letting of bids, making of contracts, purchase of materials involved in development, but shall not include development or uses which are inconsistent with the Shoreline Management Act or the city's master program. In determining the running of the two-year period hereof, there shall not be included the time during which a development was not actually pursued by construction and the pendency of litigation reasonably related thereto made it reasonable not to so pursue; provided, that the city council may, in its discretion, extend the two-year time period for a reasonable time based on factors, including the inability to expeditiously obtain other governmental permits which are required prior to the commencement of construction.

(2) If a project for which a permit has been granted has not been completed within five years after the approval of the permit by the city, the city hearing examiner shall review the permit and, upon a showing of good cause, do either of the following:

- (a) Extend the permit for one year; or
- (b) Terminate the permit.

Provided, that the running of the five-year period shall not include the time during which a development was not actually pursued by construction and the pendency of litigation reasonably related thereto made it reasonable not to so pursue; provided further, that nothing herein shall preclude the city from issuing permits with a fixed termination date less than five years.

22E.050.130 Scope of chapter.

Nothing in this chapter shall authorize the issuance of a permit upon conditions or terms which are specifically contrary to the laws of the state of Washington.

22E.050.140 Burden of proof.

All applicants for permits shall have the burden of proving that a proposed development is consistent with the criteria which must be met before the permit is issued.

22E.050.150 Permit rescinded.

Any permit issued hereunder may be rescinded by the city council upon a finding that a permittee has not complied with the conditions of a permit, subject however to a hearing as hereinafter provided.

22E.050.160 Rescission – Hearing.

Before such permit is rescinded by the council, the council shall set a date for a public hearing to determine whether the permittee has not complied with the conditions of the permit. This hearing will be held at such time as deemed appropriate by the council, and upon notice to the permittee by mailing such to permittee's address as shown on the application, by posting one notice at the development, and by notice in a newspaper of general circulation within the city at least 10 days prior to the hearing.

22E.050.170 Mayor's authority.

The mayor shall have the authority to immediately stop any work under a permit which the mayor believes, in good faith, is not in compliance with the permit and is likely to cause immediate and irreparable harm. Upon such a stop order being issued, the permittee shall immediately cease and desist such portion of the development which is ordered stopped by the mayor, but may continue working on the other portions of the development. As soon as it is practical thereafter, a hearing will be held before the council of the city to determine whether the conditions of the permit were being violated, and if so, whether to cancel the permit or determine what other action should be taken. Notice of hearing shall be in the form and manner prescribed hereinabove as to a hearing on cancellation of a permit.

22E.050.180 Subsequent hearing – Publication of notice.

At the city council meeting following the filing of such findings by the hearing examiner, the city council, on its own initiative or on request of an aggrieved party, whether the applicant or any other individual, may set another hearing date by giving notice in the newspaper and by mail in the manner prescribed for the hearing examiner, and at such public hearing determine on the merits whether the development is consistent with the legislative policies stated in RCW 90.58.020, Shoreline Management Act, and the Shoreline Master Program of the City of Marysville. If at such hearing the majority of the council determines that such development satisfies the criteria, then a permit shall be issued upon the terms and conditions hereinafter prescribed and prescribed by the council.

22E.050.190 Revisions to permit.

When an applicant seeks to revise a substantial development, conditional use or variance permit, the city Community Development Department shall request from the applicant detailed plans and text describing the proposed changes in the permit. If the Community Development Department determines that the proposed changes are within the scope and intent of the original permit, the revision shall be automatically approved. "Within the scope and intent of the original permit" means the following:

- (1) No additional over-water construction will be involved;
- (2) Lot coverage and height may be increased a maximum of 10 percent from provisions of the original permit; provided, that revisions involving new structures not shown on the original site plan shall require a new permit;
- (3) Landscaping may be added to a project without necessitating an application for a new permit;
- (4) The use authorized pursuant to the original permit is not changed;
- (5) No additional significant adverse environmental impact will be caused by the project revision.

If the revision, or the sum of the revision and any previously approved revisions, will violate the criteria specified above, the city shall require the applicant to apply for a new substantial development, conditional use or variance permit, as appropriate, in the manner provided for herein.

22E.050.200 Streamside protection zone.

(1) Establishment of Zone – Purpose. A streamside protection zone is established along both sides of all of the following streams, or segments thereof, within the city of Marysville: Washington State Department of Fisheries stream numbers 0044 (Quilceda Creek), 0068 (Allen Creek), 0068A, 0073 (Munson Creek), 0073A, 0074 (two tributaries), Ebey Slough.

The purpose of this zone is to provide a buffer area where natural vegetation will be preserved and development will be prohibited, thereby protecting the streams from unnatural modification or intrusion, erosion, siltation and pollution and promoting and preserving natural life cycles of fish and game in and around the streams. Furthermore, this zone will preserve access to the streams for the limited purpose of maintaining the natural characteristics of the streams by approved techniques, and for other limited purposes which will have no adverse environmental impact upon the streams. This zone shall be implemented as an overlay of municipal control and regulation which is applicable in all land use categories and environmental classifications.

(2) Definition of Zone. A streamside protection zone shall extend 25 feet upland from that point in the natural contour where the topography breaks for the streambeds near as may be determined. As a guide in interpreting the definition of this zone, all parties may refer to figure 4 found on page 79 of the 1981 Marysville Area Draft Comprehensive Plan, as prepared by Snohomish County. In any cases where a break in the natural contour lines cannot be determined, the streamside protection zone shall be measured from the ordinary high water mark, which is defined as follows: That mark that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation as that condition existed on June 1, 1971, or as it may naturally change thereafter; provided, that in any area where the ordinary high water mark cannot be found pursuant to this definition, it shall be the line of mean high water.

(3) Restrictions Within Zone. Within the streamside protection zone the following activities shall be prohibited:

- (a) Construction of any structures, permanent or temporary, including fences;
 - (b) Construction of any on-site sewage disposal system, or other underground facilities
- except as provided in [subsection \(4\)](#) of this section;
- (c) Grading, filling or other earthwork of any kind;
 - (d) Grazing or keeping livestock;
 - (e) Storage, parking, dumping or disposing of any materials, natural or unnatural, including motor vehicles, refuse, garbage, cuttings from trees, lawns and gardens, and animal wastes;
 - (f) Landscaping, or cutting, removing, trimming or otherwise modifying any natural vegetation which serves the function of providing shade and protection for the streamside or is a source of food or habitat for fish or game;
 - (g) Relocation of the natural course of the stream, or modification of the flow characteristics thereof.

(4) Developments Allowed Within Zone. Notwithstanding the above, the following developments, land uses and activities are permitted within the streamside protection zone provided that a shoreline development permit, if applicable, is first obtained from the city:

- (a) Public and private utility lines and appurtenances, including underground storm drainage facilities;
- (b) Public and private roads, bridges and appurtenances;
- (c) Temporary private roads and bridges for the purpose of providing access to perform stream maintenance services;
- (d) Activities and improvements which are necessary to maintain the natural characteristics of a stream;
- (e) Unimproved trails for recreational purposes and other passive recreational uses;
- (f) Public parks and recreational developments.

(5) Rehabilitation Required. The city shall require rehabilitation and replanting of natural protective vegetation within the streamside protection zone on all properties which become subject to the city's regulatory jurisdiction in connection with applications for any of the following:

- (a) Subdivision;
- (b) Binding site plan;
- (c) Short plat;
- (d) Planned residential development;

- (e) Mobile home park;
 - (f) Building permit;
 - (g) Conditional use permit;
 - (h) Shoreline development permit.
- (6) Variances. The city council shall have the authority to grant a variance from the restrictions contained in [subsection \(3\) of this section](#) pursuant to the procedures, filing fees and criteria specified in Shoreline Master Program of the City of Marysville (omitting any references to the Department of Ecology). If a variance application is merged with a pending shoreline development permit application, the applicant shall pay the city a single fee of \$1,000. No variance shall be granted which is inconsistent with the policies of the Shoreline Management Act of the state of Washington and the master program of the city of Marysville.
- (7) Nonconforming Uses. Any uses, developments or activities existing within the streamside protection zone on the date the zone becomes applicable to the subject property, and which were in full compliance with all codes and regulations of the city or other applicable jurisdiction at the time, shall be regarded as nonconforming uses. The uses, developments and activities may be continued for a period of two years thereafter if properly repaired, maintained and actively utilized. At the end of said period, they shall be removed, at the owner's cost, and the streamside protection zone shall be brought into conformity with this section; provided, that grazing or keeping livestock, landscaping, and permanent structures (excluding fences), which constitute nonconforming uses may continue beyond the two-year period in accordance with the terms and provisions of [Chapter 22C.100 MMC](#). No nonconforming use, development or activity within a streamside protection zone shall be replaced, expanded or intensified in any manner whatsoever.
- (8) Exemption. All commercial and industrial uses, developments and activities which abut Ebey Slough and which exist within the streamside protection zone on the effective date of said zone, shall be exempt from the restrictions of the zone until one of the following occurs:
- (a) The use, development or activity is terminated, discontinued or abandoned for a period of at least 12 consecutive months; or
 - (b) The improvements are destroyed or demolished to an extent where restoration costs would exceed 75 percent of the assessed value; or
 - (c) The use of the property is changed to a new occupancy classification under the Uniform Building Code.

22E.050.210**Violation – Penalty.**

In addition to incurring civil liability, any person found to have willfully engaged in activities on the shorelines within the city in violation of the provisions of this chapter or any of the master programs, rules or regulations adopted pursuant thereto, shall be guilty of a misdemeanor, and shall be punished by fine not to exceed \$300.00, or by imprisonment not to exceed 60 days, or by both such fine and imprisonment.